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**CITY OF CARDIFF COUNCIL  
CYNGOR DINAS CAERDYDD**

**CABINET MEETING: DATE**

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**ARTS MANAGEMENT PROCUREMENT**

**REPORT OF DIRECTOR OF ECONOMIC DEVELOPMENT**

**AGENDA ITEM:**

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**PORTFOLIO:** Cllr Peter Bradbury (Community Development, Co-operatives and Social Enterprise)

**Appendices 2, 3, 4 & 5 to this report are not for publication under Schedule 12A Part 4 paragraph 14 pursuant to Schedule 12A Part 5 paragraph 21 of the Local Government Act 1972 (as amended). It is viewed that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.**

**Reason for this Report**

1. To seek Cabinet approval to terminate the Arts & Culture Alternative Delivery Model (ADM) competitive dialogue procurement process with immediate effect as the best offer does not meet the Council's aspirations.
2. To seek Cabinet approval to progress an internal programme of improvement at St. David's Hall and New Theatre referred to as the 'Enhanced In-house Model' to significantly reduce the annual revenue subsidy.
3. To outline a high level strategy for further reducing the annual revenue subsidy and for attracting external capital funding to modernise St David's Hall and New Theatre to improve the commercial potential of the venues.

**Introduction**

4. In 2014, the City of Cardiff Council embarked upon a procurement process to explore 'Alternative Delivery Models' for the management and

operation of its Leisure Centre estate and for its Arts Venues. Two separate Competitive Dialogue procurement processes were established and were run in parallel by the same in-house dialogue team. At the Final Tender stage the Leisure Centre procurement was given priority by the Council resulting in slippage to the Arts procurement whilst the Leisure Centre process was concluded.

5. The Arts procurement process is now at a Gateway Review stage following receipt of a Draft Final Tender from the one remaining bidder in the process. The Council now needs to decide whether to expend further resources to continue dialogue with the bidder or to terminate the process forthwith.
6. The detailed offer presented by the final bidder does not deliver the level of financial benefit and risk transfer the Council had set out to achieve through the process. The bid requires the Council to contractually commit to providing a subsidy of £1.26m per annum over the 15 year term of the contract.
7. The proposed model of operation presented by the bidder involves the transfer of Council staff into a 'new-start' Community Interest Company (CiC), with the bidder providing management expertise and retaining step-in rights. This model is designed to help reduce operational costs, including National Non Domestic Rates (NNDR) contributions and to provide access to external funding. However, the model inadvertently introduces an additional level of complexity for the Council in terms of the apportionment of risk and responsibilities. Furthermore, given that through this process the bidder is seeking to make its first significant step into the arts market the expertise largely rest with the staff already employed at the venues.
8. In terms of financial appraisal, the bid represents only a marginal benefit compared to the in-house comparator model. As outlined above, the difference essentially relates to the reduction in National Non Domestic Rates (NNDR) contributions which the bidder aims to realise through the CiC model. There is potential for the Council to mitigate these costs through its own consideration of a 'not for profit' vehicle without the need to transfer control of the venues to the private sector and importantly without the need for the Council to commit contractually to the provision of a £1.26m subsidy for 15 years.
9. The Council had also hoped to transfer some additional risks through the process including costs associated with the deteriorating condition of the buildings. The bidder's offer lacks any commitment to direct capital investment and instead relies on contributions from funding organisations that the Council is already aware of. Other significant risks remain with the Council including the pension liability of existing staff.
10. Given the nature of dialogue to date, and the lack of competition left in the process, it is unlikely that the bidder's offer would be significantly improved through further dialogue. It is therefore proposed to terminate the process with immediate effect and to instead concentrate effort and

resources on mobilising an internal improvement programme for the venues.

## **Background**

11. St David's Hall (the national Concert Hall for Wales) and the New Theatre generate more than 440,000 attendances each year across a broad range of shows, programmes and workshops, including events of national and international significance such as the Cardiff Singer of the World. Together the venues generate circa £38 million of economic benefit for the city and make a significant contribution to the city's social and cultural richness and diversity.
12. The venues have a combined turnover of circa £11.6m per annum with the cost of operation largely met through ticket sales and other commercial income. The Council has however needed to provide a level of 'top-up' revenue funding, historically in the region of just under £3m per annum (e.g. £2.94m in 2008/9). In recent years this subsidy has been reduced year on year as the financial pressures have continued to bite, to a point where in 2015/16 financial year the level of operational subsidy was down to just under £1.79m for both venues.
13. Despite the recent improved income position, growing pressure on public finances has led the Council to consider alternative approaches to managing and operating the venues in an attempt to provide better long term financial sustainability. In May 2014 a report was presented to Cabinet outlining future management options for St David's Hall and the New Theatre and authority was granted to begin a competitive dialogue procurement process to secure one or more management partner organisations. The key aim of the process was to attract a commercial operator with a strong track record in the industry that would significantly reduce the need for revenue subsidy from the Council whilst protecting the cultural programme and at the same time committing to invest in the buildings including unlocking external capital funding.

## *The Procurement Process*

14. The Cabinet decision in May agreed that the competitive dialogue process would be run in parallel with a similar process being taken forward in relation to the Council's Leisure Centre estate. This was designed to enable a small pool of experienced staff to spread their expertise across both streams to limit the overall cost to the Council. The process began with the issuing of a Prior Information Notice to raise market awareness shortly following the Cabinet decision. An open meeting was organised to inform interested parties, followed by 22 individual meetings. On 11th December 2014, an OJEU Contract Notice, Memorandum of Information and a Pre-Qualifying Questionnaire were issued to the market. Following evaluation, 7 organisations were invited to submit Outline Solutions and to proceed to the dialogue stage.
15. The Invitation to Submit Outline Solutions (ISOS) was issued on the 14th April 2015. First round dialogue meetings took place in May with

submissions received in June 2015. The evaluation team reviewed submissions from the 7 bidders in line with the scoring methodology and the process was moderated for further assurance.

16. Following this, an Invitation to Submit Detailed Solutions (ISDS) was issued to 4 bidders on the 4th August 2015, and dialogue meetings were held on August 14th. Responses were received on 23rd October 2015. Following dialogue and evaluation, only one bidder was able to be invited to continue with the procurement.
17. A Draft Final Submission was received on the 5<sup>th</sup> July 2016 from the single remaining bidder and dialogue remains open. Much of the operational and programme development is, as would be expected, similar to that contained within the Council's existing programme. Further headline detail of the bidder's submission is included in Confidential Appendix 4.
18. As part of the process, the Council has developed an internal comparator model known as the 'Enhanced In-house Model' which sets out changes the Council could introduce to improve the financial performance of the venues. This was undertaken primarily to establish an internal benchmark to compare with the proposals received from bidders to ensure the scale of benefit would justify the consequential loss of control.

## **Issues**

19. The attraction of a commercial operator was intended to help the Council address some of the fundamental issues with managing and operating the venues. The reduction of the revenue subsidy has always been the Council's foremost priority. Based on the 'Enhanced In-house Model', a reduction of £1.26m is set out in the Council's Medium Term Financial Plan phased over a number of years. In the current financial year it was anticipated to deliver £130k of savings but this has been deferred until 17/18 to take account of the slippage in the procurement process. In 17/18 additional savings of £417k are required, and a further £416k is planned for 18/19. Together these savings will reduce the overall level of subsidy for both venues to £1.26m per annum.
20. In addition to the above, both venues are in need of significant capital investment. The maintenance backlog across the two buildings based on recent condition surveys is in excess of £5.8m, including Priority 1 works at £644k. A provision of £644k has been made in the Council's Capital Programme to support the procurement process and has been allocated to the Priority 1 works that would fall within the Council's responsibility if the contract were to be awarded to an external partner. An additional amount of £1.01m has been identified in further condition reports as being necessary over the length of the contract to satisfy the Council's contract obligations. The Council had hoped to offset some of the longer-term 'landlord' costs associated with the deteriorating condition of the buildings, but it has become clear through dialogue that the Council will need to retain all of the risk and costs associated with the external fabric of the buildings.

21. In addition to the costs set out in the above paragraph, the internal presentation of the buildings are in need of comprehensive modernisation, particularly St David's Hall. Addressing these costs will become an important aspect of any plan to achieve long term financial sustainability as the venues need to be able to deliver a range of commercial income streams over and above ticket sales, which are currently difficult to achieve due to the condition of the buildings. Unfortunately the procurement process has not managed to un-lock any significant commitment from bidders to invest in the buildings.
22. Through the process the Council has sought to retain a level of control over how the buildings are operated and has sought to transfer a number of operational liabilities to the external operator. A particular issue has been to protect the terms and condition of staff and to ensure that any efficiencies promised in operating costs are not simply achieved through a reduction in staff wages and terms and conditions, with particular protections put in place to ensure compliance with single status and to exclude zero hours contracts. Another consideration that needed to be given was in respect of the pension risk of additional employer contributions being required in future years. Following consideration of the actuarial report it was determined to keep the risk with the Council in order to provide certainty to bidders who would otherwise have built contingency into their bids, adding to the level of subsidy when the risk may never have materialised. The Council has also sought to ensure the buildings retain their cultural importance to the city and are not commercialised to the extent that the cultural programme becomes eroded. All of these controls have to some extent affected the ability of bidders to deliver the Council's financial objectives.
23. Since the Invitation to Submit Detailed Solutions stage of the procurement process the Council has been in dialogue with a single bidder. The other bidders have either withdrawn, or have been excluded through evaluation, or have failed to comply with the procurement process. The single bidder has therefore been effectively competing against the Council's 'Enhanced In-house Model'. This has created a lack of competitive tension for the final stages of the process and gives little confidence that significant improvement on the current offer will be achieved by continuing the process. In a normal competitive scenario, the remaining bidders would now be offered a final opportunity to submit their full and final bid to conclude the process. This would involve another round of dialogue and the preparation of another document adding to the cost of the bidding process for both the bidder and the Council.
24. Confidential Appendix 4 provides a summary of the Draft Final Submission that has been presented by the remaining bidder to the Council. Confidential Appendix 5 provides an analysis of the bid and a comparison against the 'Enhanced In-house Model'.
25. The conclusion drawn is that whilst the external bid provides a marginal revenue benefit compared to the 'Enhanced In-house Model'), there is potential for this to be mitigated without transferring control to a

commercial operator and committing to a long term subsidy. In the short term this would involve exploring the benefits of a Trust or other appropriate 'not for profit' vehicle. The external bidder proposes that NNDR will be reduced through the creation of a Community Interest Company allowing access to mandatory NNDR relief and potential discretionary relief. There is potential for the in-house model to also reduce these costs through the establishment of a similar vehicle which would effectively remove the revenue differential between the external and in-house positions. However, it is fair to say that the introduction of a Trust or 'not for profit' vehicle could also lead to a certain loss of control and may have other implications for the Council which need to be fully understood before committing to this approach.

26. Further to the above, St David's Hall in particular has significant potential to improve its income position if investment can be secured to modernise the building. The external bid delivers little by way of direct capital investment from the bidder and instead relies on applications to external funding bodies, which an 'in-house' approach evolving into a Trust or 'not for profit' vehicle should be equally well placed to deliver. The crucial point though, is that if the Council commits to a 15 year operating contract at an agreed level of subsidy, any improvement to the level of income derived from securing capital investment would be shared with the commercial operator as a 'gain share' proposal rather than being incorporated into the contractual Council subsidy to the operator.
27. In sum, the revenue benefit and risk transfer offered by the bidder does not meet the Council's aspiration and is not deemed sufficient to justify the transfer of control to the bidder and/or to commit contractually to providing an on-going level of subsidy over the 15 year term of the contract.
28. It is therefore proposed that the procurement process does not proceed to the final stage and is terminated with immediate effect. This action will stop the Council incurring any further costs associated with the procurement process and will also limit the bidder's exposure to any further costs. The risks associated with taking this decision at the current stage in the process are set out in the legal implications below.
29. The procurement process has confirmed that there remains an ongoing need for revenue subsidy of the venues, at least until such a time as a deliverable plan to modernise the buildings comes forward. An in-house approach will enable the Council to retain full control of the buildings including all aspects of service delivery, pricing, programming and marketing, and importantly control over any development potential. However, retaining in-house control also means that the Council will remain fully responsible for all income risk and all risk associated with expenditure, including staffing, utilities, repairs and maintenance and costs relating to the replacement of equipment and facilities. The Council, as landlord, would in any case retain responsibility for costs relating to the external fabric of the building.

## **The Way Forward**

30. The Enhanced In-house Model has been developed as a comparator model to provide a benchmark against which to assess external bids through the procurement process. It has proven to be a very useful exercise and has sharpened the Council's thinking regarding what can be achieved internally to reduce the subsidy and to provide a more sustainable financial footing for the venues over the longer term. The proposal being put forward in this report is to terminate the procurement process and to move forward immediately with the implementation of the Enhanced In-house Model.
31. The Enhanced In-house Model consists of three potential phases of implementation:

### *Enhanced In-House Model - Phase 1*

32. The first step, to be progressed with immediate effect, involves a restructure of the existing venues staff to ensure the 17/18 savings target of £417k and the deferred 16/17 target of £130k are delivered. The aim is to create a single staffing team across both venues to provide more efficient management, as well as to generally improve co-ordination between the various teams including programming, marketing, finance, administration, education/community, building maintenance, box office, bars/catering and customer service. This will also allow for effective scheduling of staff to allow for differing 'dark' periods and will improve the venues ability to adapt to the needs of the programmed performances and events.
33. The proposed restructuring will result in a reduction of circa 11 posts, with the majority to be managed through natural churn and Voluntary Severance. The restructuring is anticipated to deliver circa £300k of savings. In addition to restructuring, the remaining savings target to achieve the MTFP will be delivered through improved income performance at both venues reflecting the improved position in the current financial year and in the previous financial year.

### *Enhanced In-House Model - Phase 2*

34. The next step will be to explore alternative methods for attracting capital investment including an examination of a suitable 'not for profit' vehicle such as a Trust. This approach may potentially enable the Council to retain a significant level of interest in the venues, whilst providing operational efficiencies, and enabling outside partners to make a greater contribution.
35. 'Not for profit' organisations are able to claim mandatory National Non Domestic Rates (NNDR) relief and sometimes discretionary relief, depending on local policy. In terms of the procurement process, future reduction of current NNDR costs for both venues of £196k would bring the Enhanced In-house Model (operating as a Trust or similar vehicle) more or less in line with the financial offer from the remaining bidder.

36. A 'not for profit' vehicle may also help with the attraction of external funding to service capital requirements and to provide funding for additional performance and programme related development in both venues. It is also anticipated this type of approach will help to foster improved partnership working with national companies, organisations and initiatives from across the UK securing the current output and programming whilst also attracting and supporting additional activities.
37. Whilst a 'not for profit' vehicle seems to offer an opportunity to further reduce the revenue subsidy and to attract investment, there are potential implications, including a consequential loss of control. It is therefore proposed to undertake a full and detailed consideration of the potential 'not for profit' approaches model and to report back to a future meeting of Cabinet with a recommendation.

### Enhanced In-House Model - Phase 3

38. The final step in the Enhanced In-house Model is to explore a development-led investment proposition for the venues, particularly for St David's Hall. It is clear that St David's Hall is in need of a comprehensive modernisation plan to address its significant maintenance backlog and to enable internal reconfiguration and upgrade. Funding the modernisation plan will require the attraction of substantial capital investment from external bodies and could also require an innovative approach to maximising the development potential of the site.
39. St David's Hall occupies a large site right in the heart of Cardiff's thriving retail centre which benefits from the highest regional levels of footfall. The key aim of the plan will be to explore ways in which the venue can be re-configured to make it more accessible to adjacent footfall to provide an investment basis for new facilities that can capture the significant secondary spend opportunities. The plan will also need to improve the customer experience associated with the venue's primary purpose and primary income stream (concerts, shows and events) by unlocking investment into the main concert hall. Similar venues in other parts of the UK have successfully managed to secure significant investment and generate new income streams over and above ticket sales by providing facilities such as bars, restaurants, meeting rooms and conference/exhibition/gallery spaces that drive people into the building when there is no programmed event.
40. At present the ground-floor space under St David's Hall is occupied by two large retail units that form part of the St David's Shopping Centre. This limits the venue's access to passing footfall. The only ground level accommodation currently available to the venue is occupied by a ticket hall which provides little scope for attracting secondary spend. The Hall also sits directly above the new St David's 2 Shopping Centre and yet no direct access points exist into the Centre. In addition to upgrading the fabric of the building, the modernisation plan will need to reconsider access points and will need to improve general visibility into the building to passing footfall.



### Enhanced In-House Model – Key Benefits

41. One of the major benefits of the Enhanced In-house Model is that the Council will retain control of the venues. This will enable the Council to:
- Ensure that any income generation benefits arising from the successful attraction of investment in the building translates directly into reduced subsidy.
  - Retain its discretion over the event programme and the wider community use of the venues.
  - Provide more security to staff regarding their future terms and conditions of employment including ensuring compliance with single status regulations and fully protecting against zero hours contracts.
  - Manage the restructure in a way that protects the interests of staff as they will remain employed by the Council during that process. It is anticipated that the reduction in staff required by the restructure will largely be managed through natural churn and Voluntary Severance.
  - Deliver the savings targets in the Council's Medium Term Financial Plan. The Enhanced In-house Model can be implemented almost immediately, whereas continuing with the procurement process will require time to conclude the final part of the process and further time to negotiate a final contract. This effectively means the commercial operator will not be able to meet the savings targets within the required timescales.
  - Make progress with exploring development options. Introducing a new lease arrangement between the Council and an external operator would introduce an additional layer of complexity in considering a development approach. Furthermore, given the lack of commitment from the bidder to invest in the buildings and the lack of incentive for the Council to invest in terms of reducing the subsidy, it seems the development approach would only realistically be achieved if the venues remain in Council control.

### Enhanced In-House Model - Risks

42. The Enhanced In-house Model means that the risk of delivering savings and improvements will remain with the Council rather than being transferred to an external organisation. A contractual arrangement with an external operator does provide greater certainty of delivery of savings, as the external operator will be obliged to operate the venues at the agreed level of subsidy. However, entering into a long term commitment to provide an agreed level of subsidy also creates a risk that the Council will be required to provide an on-going subsidy even if financial performance improves. It also reduces the Council's flexibility should budget pressures continue.

43. Issues such as changes within the market, both in terms of demand from users as well as competition from other similar providers also poses a risk to the successful operation of the venues, and if the venues remain in-house this risk will sit with the Council. Again, this risk can be mitigated by the ability to respond relatively quickly to changes in demand.

### **Consultation**

44. Consultation has taken place during the procurement process with staff and representative Unions. The proposals and recommendations contained within this report have been the subject of consultation with staff and their representative Unions and no issues have been raised.

### **Reason for Recommendations**

45. To cease the competitive dialogue procurement exercise with immediate effect and to begin the process of implementing the 'Enhanced In-House Model', and to undertake further work to assess the implications for the council of adopting a 'not for profit' model.

### **Financial Implications**

46. The legal implications make reference to the Council reserving the right to not award a contract and that bidders have entered into the competitive dialogue process at their own risk including funding their bid costs. Consequently any challenge from bidders for reimbursement of their bid costs should be dismissible.
47. By continuing to provide these Cultural Services in-house the Council will retain full control and flexibility over how these services are delivered in the future. This would include control over both pricing and programming. By retaining the direct operation of these venues, the Council would also retain all financial risks associated with service delivery including any Budget variances from the under recovery of income and expenditure overspends. The Enhanced In-house Model would therefore deliver 2017/18 budget reductions and any future MTFP proposals. There is a fundamental trade-off between the Council's retention of operational flexibility on one side and its retention of financial risk on the other.
48. The Enhanced In-house Model could be implemented quicker than the transfer of delivery to an external partner. In the latter case this would require concluding the competitive dialogue process, resulting in the submission of the Final Tender, and then completion of the contract between the Council and the external partner. Any financial advantage associated with the quicker delivery of the Enhanced In-house Model will be a short-term financial advantage. This is evidenced by the lower projected costs of the external partner model over the 15 year evaluation period compared to the Enhanced In-house Model.
49. With a long term external partner contract the financial risks of delivering the agreed service to a fixed subsidy would pass to the external partner with the Council's financial commitment limited to the agreed subsidy

payments included in the contract. A long term contract with an external partner although it will include provisions for change to the contract will be inherently less flexible than an equivalent in-house model. Changes may require further negotiation and may have an impact on the agreed value of the contract.

50. The report outlines the option of transferring these cultural venues to a 'not for profit' vehicle such as a Trust as a potential phase 2 and that further work is undertaken to research the costs and benefits associated for these venues. Any future decision to transfer to a 'not for profit' vehicle will need to be supported by a robust business case in which the implications for the Council of moving to this operating model are fully outlined. Significant elements of the additional financial benefits achieved by the external partner are as a consequence of its status as a not for profit organisation, in particular its eligibility for Mandatory Non-Domestic Rate Relief. The same benefit would also apply if the venues were transferred to a similar vehicle but it would be necessary for the vehicle to operate at arms-length from the Council to secure this benefit. Any 'not for profit' model will therefore be associated with a degree of loss of control and flexibility for the Council. The report suggests that in addition to the reduction in NNDR the not for profit/trust model would include the additional income generation benefits, in particular with regard to securing external funding, but that the running costs of any vehicle and the lack of any strong financial covenant will also need to be considered in the Business Case.
51. The possible redevelopment of St David's Hall, which is identified as Phase 3 in the report, will also require a subsequent Cabinet report, including a Business Case / Development Appraisal justification, but the Directorate believe these development options will be enhanced by the Council retaining control of this venue. The implications of any potential redevelopment will also need to be considered as part of the further work on the operational implications of the Trust / Not for Profit Model.
52. The potential for the generation of additional income arising from investments in the venues has been highlighted in the report. These will need to be supported by appropriate business cases to robustly demonstrate that the net returns from these potential investments are deliverable.
53. The further work required to assess the implications for the Trust / Not for Profit model may need to be supplemented by specific professional advice. The costs of this additional advice will need to be funded from existing resources, either from the Directorate or through Organisational Development resources.

### **Legal Implications**

54. It is lawful for an authority to abandon a procurement process (*Apcoa Parking (UK) Ltd v City of Westminster* [2010] EWHC 943 (QB)). In that case, the court noted that Westminster expressly reserved the right in the original tender documents not to award any contracts and stated that it

was not bound to any course of action because of issuing the invitation to tender or negotiating with the bidders.

55. In the present case it is understood that the tender documentation contained caveats to the effect ‘...The Authority reserves the right to choose not to award any contract as a result of the current procurement process and the Authority shall not be committed to any course of action as a result of issuing this draft ISFT or any invitation to participate in this procurement exercise...’.
56. If the decision is made to abandon the procurement (not to proceed to award a contract) the authority must notify candidates and tenderers of the grounds for its decision (Regulation 55 Public Contracts Regulations 2015) and follow the prescribed procedures.
57. It is important that the decision maker is satisfied that a decision to abandon this procurement is a ‘reasonable’ decision to reach having regard to all material facts, as such a decision is subject to potential review/challenge. Case law has established that the grounds for a contracting authority's decision to abandon a procurement process may (i) be based on the authority's assessment of whether it is expedient and in the public interest to carry an award procedure to its conclusion. This decision may consider any changes in the economic context or factual circumstances, or the needs of the contracting Authority concerned and or (ii) relate to an insufficient degree of competition due to the fact that, at the conclusion of the award procedure in question, only one tenderer was qualified to perform the contract.
58. It is noted that the Court of Justice of the European Union (Croce Amica One Italia Srl v Azienda Regionale Emergenza Urgenza (Case C-440/13) [2014] EUECJ, has confirmed that:
  - ‘A decision by a contracting authority not to award a public contract need not be limited to exceptional cases or must not necessarily be based on serious grounds’, (none the less the decision must be a reasonable decision having regard to the potential for judicial review).
  - ‘Although the contracting authority must notify candidates and tenderers of the grounds for its decision if it decides to withdraw the invitation to tender for a public contract, there is no implied obligation on that authority to carry the award procedure to its conclusion’.
  - ‘The requirement to communicate the grounds for a decision to withdraw an invitation to tender is dictated by the concern to ensure compliance with the principle of equal treatment’.
59. As regards potential liability for bidders' costs, courts have proved reluctant to compensate bidders, either for the costs incurred where a procurement process is abandoned, or for the loss of the profits that the contract would have generated if the process had not been abandoned and the contract had instead been awarded to the claimant. In any event, in this case the Council's procurement documents made clear

that the Authority reserved its position as to whether or not it will enter into contractual arrangements and dialogue will be entirely at the participants' risk and cost and if any challenge was brought for costs/damages the caveats, as set out in the procurement documents, would be relied upon ['The Authority reserves its position as to whether or not it will enter into contractual arrangements and dialogue will be entirely at the participants' risk and cost ...'; The Authority is not liable for any costs resulting from any cancellation of this tender process or for any other costs incurred by those tendering for this Contract; Each party will bear its own costs of preparation and draft ISFT submission, and any subsequent clarification and negotiation; the Authority shall bear no liability whatsoever for the outcome of the CD and shall not be liable for the costs of draft ISFT preparation, CD, or any loss of profit or other economic loss incurred by participants or their sub-contractors or funders'].

60. The report refers to future consideration being given to the establishment of a Not for Profit Vehicle/Trust and/or other development options. Detailed legal advice should be sought on the proposals as they are developed and before any decision is sought
61. The report refers to potential establishment restructures, which can raise sensitivities for the staff concerned. The employment implications are set out within the HR implications below.
62. In considering this matter the decision maker must have regard to the Council's duties under the Equality Act 2010. Pursuant to these legal duties Councils must, in making decisions, have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are: (a) Age, ( b ) Gender reassignment( c ) Sex (d) Race – including ethnic or national origin, colour or nationality, (e) Disability, (f) Pregnancy and maternity, (g) Marriage and civil partnership, (h)Sexual orientation (i)Religion or belief – including lack of belief.

### **HR Implications**

63. Both scenarios involve a staffing restructure. Any staff changes arising from the introduction of the enhanced in-house model will require full consultation with trade unions and staff. The new structure must be achieved by applying the Council's agreed restructure process, which will include the consideration of Voluntary Redundancy, in line with the Council's Voluntary Redundancy Scheme.

### **RECOMMENDATIONS**

The Cabinet is recommended to:

1. Provide authority to abandon the Arts Management Competitive Dialogue procurement process;

2. Delegate authority to the Director of Economic Development, in consultation with the Cabinet Member Community Development, Co-operatives and Social Enterprise, the Cabinet Member Corporate Services and Performance, the Chief Executive, the Section 151 Officer and the Monitoring Officer to begin the process of implementing the 'Enhanced In-House Model' as outlined in this report;
3. Provide authority to explore the potential of a 'not for profit' vehicle and note that a separate report will be presented back to Cabinet.
4. Provide authority to prepare a modernisation plan for St David's Hall and New Theatre including consideration of development options and note that a separate report will be presented back to Cabinet.

**NEIL HANRATTY**  
**DIRECTOR OF ECONOMIC DEVELOPMENT**  
**25 January 2017**

### **Appendices**

#### **Appendix 1: Arts Venue Procurement Information**

**The following appendices to this report are not for publication under Schedule 12A Part 4 paragraph 14 pursuant to Schedule 12A Part 5 paragraph 21 of the Local Government Act 1972 (as amended). It is viewed that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.**

- Confidential Appendix 2: Financial Summary**
- Confidential Appendix 3: Enhanced In-house Model**
- Confidential Appendix 4: Summary of Draft Final Tender**
- Confidential Appendix 5: Bid Comparison**