

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	CABINET
Report of:	Acting Strategic Director of Place
Date of Decision:	20 September 2016
SUBJECT:	TENDER STRATEGY FOR ALEXANDER STADIUM AND ANCILLARY FACILITIES
Key Decision: No	Relevant Forward Plan Ref:
If not in the Forward Plan: (please "X" box)	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>
Relevant Cabinet Member(s)	Cllr Ian Ward, Deputy Leader, Cllr Majid Mahmood, Value for Money & Efficiency
Relevant O&S Chairman:	Cllr Mohammed Aikhlaq, Corporate Resources and Governance
Wards affected:	Perry Barr

1. Purpose of report:
<p>1.1 To review the Cabinet decision made in September 2014 to externalise the operation of the Alexander Stadium and ancillary facilities using the Sport & Leisure Facilities Framework, based on feedback from Framework Contractors, which indicates little interest in bidding for a contract to manage and operate the facilities.</p> <p>1.2 To inform Cabinet of the soft market testing exercise undertaken and to outline an alternative more sustainable solution for consideration, whilst maintaining Alexander Stadium as a premier sporting facility hosting international and national athletic events.</p> <p>1.3 To obtain approval to the strategy and seek authority to proceed with the procurement of an operator for the Alexander Stadium and ancillary facilities via a competitive procedure with negotiation.</p>

2. Decision(s) recommended:
<p>That Cabinet:-</p> <p>2.1 Approves the procurement strategy detailed in Appendix 3 and the commencement of procurement activity for an operator for Alexander Stadium and ancillary facilities in accordance with the requirement and approach set out in Section 5.</p> <p>2.2 Notes that the Deputy Leader and the Cabinet Member for Value for Money and Efficiency will be briefed at key stages during the procurement process and that a contract award report will be presented to a future Cabinet meeting.</p>

Lead Contact Officer(s):	Steve Hollingworth – Assistant Director, Sports and Events
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3. Consultation

3.1 Internal

The District Chair of Perry Barr District along with Perry Barr Ward Councillors have been informed of the contents of this report and will continue to be consulted throughout the procurement process. Staff and unions have also been consulted and understand the need for proposed change in the tender strategy.

Officers from City Finance, Legal Services and Procurement have been involved in the preparation of this report and support this proposal.

3.2 External

Existing tenants at the stadium i.e. British Athletics, England Athletics and Corporate Sporting Events have been consulted and are supportive of the contents of this report. Birchfield Harriers who are the resident athletics club at the stadium also have been consulted and are supportive on the externalisation of Alexander Stadium, subject to their existing lease agreement being maintained.

4. Compliance Issues:

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

The Sport and Physical Activity Strategy contributes to the Council Business Plan and Budget 2016+ objectives of fairness, prosperity and democracy. The Sport Section's main purpose is to ensure that Birmingham becomes a healthy and active city by encouraging people to be more active. The section is responsible for developing sports strategy, policy and plans and creating sporting opportunities.

Athletics generally and running specifically are identified in the Sport and Physical Activity Strategy as both a priority sport for mass participation to increase physical activity and a key performance sport for events, facility development, economic benefit and legacy.

The Birmingham Diamond League, the British Championships and the Indoor Grand Prix are significant events in the global calendar that will play a key role in supporting the Leaders Policy Statement by contributing towards a prosperous and inclusive city. The events will play a key role in enhancing the city's status and reputation as an international city, promote the agenda for healthy lifestyles, reducing health inequality and promoting job creation.

4.1.2 Birmingham Business Charter for Social Responsibility (BBC4SR)

Compliance with the BBC4SR including payment of the living wage to all staff working on this contract will be a mandatory requirement for bidders and will form part of the conditions of contract. Bidders will be required to submit an action plan that supports the local economy and creates much needed jobs including the development of an apprenticeship scheme focussed on the Leisure sector with their tender. This will be evaluated in accordance with the evaluation criteria in Appendix 3 and the Action Plan of the successful tenderer will be implemented and monitored during the contract period. It will also be a mandatory requirement that the 2nd tier supply chain, that is the providers procured by the new provider, comply with the BBC4SR and produce an action plan with commitments proportionate to the value of the services provided throughout the contract period.

4.2 Financial Implications

The Transformation of Leisure Services report approved by Cabinet in December 2013 included a medium term financial plan for the service. The financial plan included an expectation for the Alexander Stadium to be transferred to an external contractor (by 2015/16) and operated at nil cost to the City Council. The currently forecast deficit for this facility for 2016/17 is £1.7m. The aim of the proposed procurement is to also secure a revenue stream to the City Council over and above the core financial objective of a nil cost.

The currently forecast (and any future) deficits incurred, until the operation of this facility is externalised, together with cost of procurement, will need to be mitigated within the Place Directorate's approved budget.

There are currently no capital resources for this project within the Council's capital programme. Any capital investment requirements would need to be addressed through the business case supporting the proposals.

4.3 Legal Implications

Under section 19 of the Local Government Act (Miscellaneous Provisions) 1976, the Council has the power to provide such recreational facilities as it thinks fit in its area and under Section 111 of the Local Government Act 1972, the Council may do anything which is incidental to the discharge of any of its functions.

The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"), applies to the transfer of an undertaking or business to another employer where there is a transfer of an economic entity which retains its identity. It also applies where there is a service provision change. Under draft regulations which will amend the 2006 Regulations such activities have to remain fundamentally the same following a transfer date for there to be a service provision change. Therefore, TUPE will apply to the external leisure management contract outlined in this report.

The requirements of the Data Protection Act 1998 and Human Rights Act 1998 have been taken into consideration in terms of the processing, management and sharing of data involved in these proposals.

4.4 Pre-Procurement Duty under Public Services (Social Value) Act 2012

Consideration of whether to undertake a consultation exercise was discussed during the planning stage and it was agreed that this would not be required as tenderers will be asked how their bid addresses social value as part of the overall evaluation.

4.5 Public Sector Equality Duty

A copy of the Equality Act 2010 – Public Sector Duty statement and equality assessment screening including Alexander Stadium can be found within the Leisure Transformation's Cabinet Report of 16th December 2013.

5. Relevant background/chronology of key events:

- 5.1 Following approval of the Transformation of the Leisure Service report by Cabinet in December 2013 a Sport and Leisure Facilities Framework was established in March 2014 for the design, build, operate and maintain of leisure facilities. This was awarded to three organisations, DC Leisure Management Ltd who subsequently changed their name to Places for People Ltd (PfP), Greenwich Leisure Ltd and Serco Leisure Operating Ltd. A further report to Cabinet in September 2014 outlined the makeup of the first two lots to be called off from the framework and approved Alexander Stadium and ancillary facilities as a standalone package that would be called off following the completion of the first two lots.
- 5.2 Initial meetings regarding Alexander Stadium were held with the Framework Contractors in March 2015, but were then put on hold at the Contractors request whilst the contracts for lots 1 and 2 were awarded. These were awarded to Serco Leisure Operating Ltd. Further time was taken up for the mobilisation of these contracts, before further meetings were scheduled in September 2015, at which point the two remaining Framework Contractors withdrew themselves from the process for Alexander Stadium as it was no longer a viable option for either of them.
- 5.3 To continue the procurement process with a single bidder would not have demonstrated best value as there is no scope for competition. Serco had also indicated that based on the current condition of the main stand within the Stadium they would not be prepared to take on a full insuring and repairing lease for the entire stadium facility.
- 5.4 The scope of the Framework would restrict any contractor to carrying out (relatively) minimal refurbishment and operate the facility almost as at present. There would be little opportunity for significant investment post contract commencement and the current procurement route would not permit a significant variation to extend the service sufficiently to exploit the facility's full development potential due to the restricted length of contract.
- 5.5 The original OJEU Notice for the Sport and Leisure Facilities Framework listed Alexander Stadium as a site that could be externalised through the Framework. Although included in the list of potential sites, the OJEU notice does not guarantee that all the facilities will be delivered in this way. However, the OJEU stated that contracts delivered through the Framework would be for a length of between 10 and 15 years and less where appropriate, thereby not allowing contracts to be awarded for a longer term.
- 5.6 The Council does not have capital resources to invest in the Alexander Stadium facilities. A solution for this would be that the private sector invests in rebuilding parts of the facility from private finance in addition to any expected investment into substantially upgrading the facility's offering. Estimates, from Framework Contractors, have suggested that it could cost £4m to rebuild the main stand to modern standards with income generating potential. There would also be a requirement to upgrade other parts of the facility, it follows that a contractor would expect significantly longer than 15 years to recover their return on investment, which would require a new procurement.

- 5.7 The risk of continuing with the current process through the Framework is that the single contractor drops out leaving no bidder in place or the bid received is unacceptable or unaffordable to the Council and would not allow us to award a contract. This would then further delay the externalisation of the Stadium by up to 12 months.
- 5.8 On this basis and following discussions with Senior Officers from Procurement, Legal Services, Finance and Sport, it was agreed that the market should be tested again through a soft market testing event to gauge the appetite for the stadium and its ancillary facilities. This would then shape delivery moving forward in order to achieve best value for the Council whilst maintaining and achieving investment in the site for the long term.
- 5.9 Oaks Consultancy were appointed following a procurement process in March 2016 to identify organisations that would have the potential to both operate and develop the Stadium facilities, organise a soft market testing event to showcase the Stadium and obtain feedback on potential development to produce recommendations on the future procurement of a Stadium operator.
- 5.10 A soft market testing event was held at the Stadium on 18th May 2016 which included a site tour, presentations from the Council's Planners and Property Officers, Sport and Finance, and individual breakout meetings with all perspective organisations. Those that attended represented a good cross section of the market and provided value insight to inform the tender strategy
- 5.11 Following information gathered from the process including the results from the soft market testing event with interested Organisations and consultation with the Council's Planners, the following requirements have been identified that will form the basis of the specification:

Tender Requirements

- 30 Year Contract including lease over the same term, to include possible break clause following negotiation.
- Stadium must continue to operate primarily as an athletics stadium hosting national and international sporting events throughout the term of the contract.
- The current community based sporting programmes prevalent within the Gymnastics and Martial Arts Centre (GMAC) and Stadium facility must be maintained and conform to the city council's specification, which will include maximum fees and charges, minimum opening hours and equality of access.
- Honour all current lease arrangements with tenants, including Birchfield Harriers long term lease and all terms and conditions.
- TUPE of existing stadium staff.
- Admitted Body Status of West Midlands Pension Scheme.
- An agreed site boundary to include Stadium including all stands, GMAC, High Performance Centre (HPC), Car Park and both access routes (Church Road route and Stadium Away) – The Boundary Plan is included at appendix 1. Not included within scope – BMX Track, Perry Park, Perry Park Allotments.
- Potential development areas – Please see planning brief included at appendix 2.
- All facilities included must be on a full insuring and repairing lease from the outset – Non-negotiable.
- Financial Requirement – Current £1.7m deficit must be reduced to nil in accordance with the existing budget plan.

- Investment proposal required on replacing or a full refurbishment of the Main/Knowles and Nelson Stands (within 5 years of contract commencement). Full Business Case must be included providing details of any enabling development (meeting planning brief requirements), full cost analysis, and risk register.
- Commitment to social value including the development of apprenticeship schemes.

5.12 Outcomes Expected

The outcomes expected from this project were included in previous reports to Cabinet and remain the same for this procurement exercise. These are:

- Ensure the delivery of high quality world class sporting events venue at Alexander Stadium
- To assist the improvement of the local area providing the local community with a better facility
- To minimise/eliminate the financial risk to the Council
- To provide a modernised service facility to tenants that is responsive to their needs.

5.13 An indicative timescale for this procurement is included within Appendix 3.

6. Evaluation of alternative option(s):

- 6.1 Do Nothing – The current operational deficit for Alexander Stadium is a significant pressure to both the Sports Service and the City Council as a whole. In addition, by doing nothing and continuing to operate the stadium in the current manner would not allow for the investment the Stadium requires in both the short and long term, therefore this is not a viable option.
- 6.2 The Council could invest its own resources in the Stadium. However, the council does not have the market expertise to invest capital in the most cost effective way, in order to mitigate the deficit and achieve an ongoing return. Furthermore the operational risk, including income generation, would remain with the council.
- 6.3 Sport & Leisure Facilities Framework – In the knowledge that only one Framework operator is likely to submit a bid, there is a significant risk that the Council will not achieve best value via this route. In addition, there is a risk that if the single bidder dropped out of the process or the bid did not achieve the Council's requirements then there would be further significant delays and abortive costs.
- 6.4 Sell the Stadium – Selling the Stadium and ancillary facilities would mean that the City Council would lose control over the operation and management of the facility. This control would remain through a contract and service specification if externalised. As a flag ship facility within the City of Birmingham, there is no political or officer support to sell and lose an extremely important Council asset.

7. Reasons for Decision(s):

- 7.1 To allow for the continuation of the procurement process to externalise Alexander Stadium and ancillary facilities, and in doing so provide both best value for the City Council and investment into the facility thus providing a sustainable long term future.

Signatures		<u>Date</u>
Deputy Leader Cllr Ian Ward
Cabinet Member for Value for Money and Efficiency Cllr Majid Mahmood
Strategic Director of Place Jacqui Kennedy

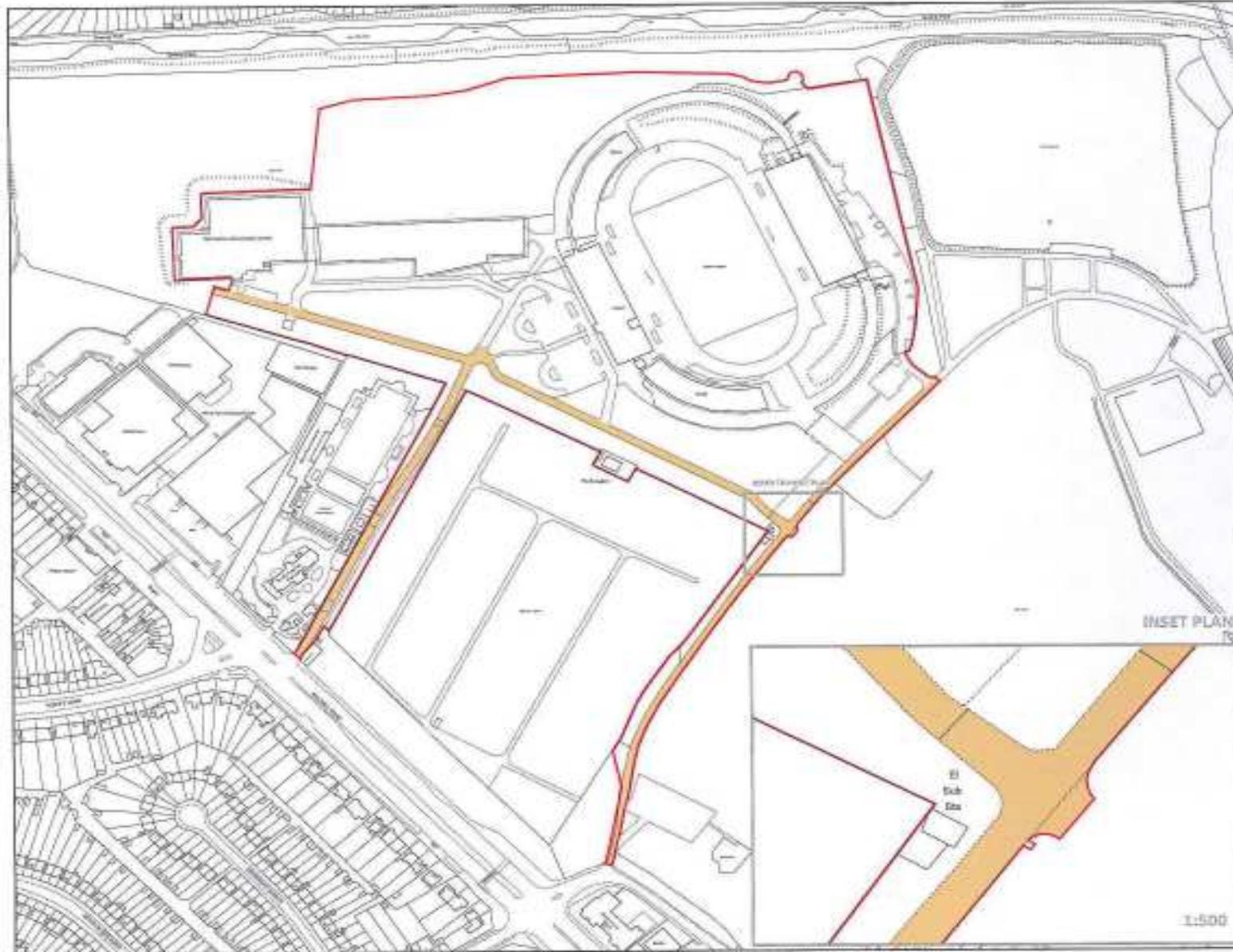
List of Background Documents used to compile this Report:
Cabinet Report 16 December 2013, Sport and Physical Activity Review – Transformation of the Leisure Service.
Cabinet Report 15 September 2014, Sports Transformations – Sport & Leisure Framework Call off Mini Competitions

List of Appendices accompanying this Report (if any):
1 Alexander Stadium Red Line Plan
2 Planning Brief
3 Alexander Stadium Procurement Strategy and delivery programme.

Report Version		Dated	
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APPENDIX 1 – RED LINE DRAWING

Drawing No. 13219



Alexander Stadium Walsall Road Perry Barr

Notes

- KEY:**
- Lease Boundary
 - Required Access



AREA EDGED RED
11.48 HECTARES APPROX.
28.36 ACRES APPROX.



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Scale 1:2,500 @A3
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 Date 19/02/2015



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Plot: P:\Columbar\road\13219.rxd

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