

# Crawley Borough Council

## Report to Overview and Scrutiny Commission 26 June 2017

### Report to Cabinet 28 June 2017

## K2 Crawley – Leisure Management Procurement

Report of the Head of Partnership Services, HPS/009

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### 1. Purpose

- 1.1 This report considers options for the future management of K2 Crawley and makes recommendations for the preferred procurement route and service priorities to be reflected in the procurement process.

### 2. Recommendations

- 2.1 To the Overview and Scrutiny Commission:

- 2.1.2 That the Commission consider the report and decide what comments, if any, it wishes to submit to the Cabinet.

- 2.2 To the Cabinet

- 2.2.2 The Cabinet is recommended to:

- a) Approve the recommended procurement approach and process for the future management of K2 Crawley, Broadfield 3G Pitch and Bewbush Gym, as set out in paragraphs 6.2 to 6.10 of this report.
- b) Approve the recommended tender evaluation model as set out in paragraphs 6.11 to 6.12 of this report.
- c) Approve a supplementary capital estimate of £170,000 to provide a further 79 car parking spaces (subject detailed design and planning approval) within the main K2 Crawley car park as outlined in paragraph 6.13 of this report. The supplementary capital estimate to be funded from useable capital receipts.
- d) Agree to establish a cross party working group (3:2) to oversee the proposed procurement and tender evaluation process as set out in paragraph 6.15 of this report and for the Head of Legal and Democratic Services to liaise with Group Leaders to obtain nominations.
- e) Note that a further report will be brought to Cabinet in due course seeking approval of a preferred leisure management contractor.

### 3. Reasons for the Recommendations

- 3.1 The recommendations are required to ensure management arrangements for K2 Crawley are in place after the expiry of the current contract in November 2018. The recommended procurement process aims to provide a balance between financial sustainability and supporting the Council's Budget Strategy whilst ensuring a high quality inclusive service which continues to support the wider health and wellbeing agenda for residents.

## **4. Background**

- 4.1 K2 Crawley opened in November 2005. The Centre has been extremely successful and now regularly attracts in excess of 1.3 million visitors per annum with around 4,500 people regularly attending as K2 Crawley Members. K2 Crawley has also supported the sustainability and success of some of the town's larger sports clubs with significant growth in membership numbers and club and individual achievements evident at Crawley Swimming Club, Crawley Athletics Club Crawley Gymnastics Club as well as many of the other smaller clubs based at K2 Crawley.
- 4.2 In November 2008, following a competitive procurement process, the Council entered into a 10 year contract with GLL who subcontracted the contract to Freedom Leisure to manage K2 Crawley. The existing contract has worked well with customer feedback generally very positive about the standards and quality of service provided and has generated significant savings compared to the previous contractual arrangements.
- 4.3 The current contract with GLL/Freedom Leisure expires in November 2018 and it is now necessary to commence the process to ensure management arrangements are in place after the expiry of the current contract.

## **5. Description of Issue to be resolved**

- 5.1 The expiry of the current K2 Crawley contract on 13<sup>th</sup> November 2018 requires the Council to establish management arrangements which will come into effect after this date. These arrangements need to be compliant with the Public Contract Regulations (2015), with European Union Public Sector Procurement Directive 2014/24/EU and with the Council's own Procurement Code. To ensure sufficient time to implement the recommended procurement approach, it is necessary now for the Council to agree its preferred option for the future management of K2 Crawley and associated leisure facilities.

## **6 Information & Analysis Supporting Recommendation**

- 6.1 This section sets out options, key considerations associated with the future management of K2 Crawley. Specifically, recommendations are made in respect of:
- (i) Options appraisal and preferred procurement approach
  - (ii) Proposed procurement process and variant bid proposals
  - (iii) Proposed Contract Scope
  - (iv) Proposed Contract Length
  - (v) Tender Evaluation Model
  - (vi) Car Parking Arrangements
  - (vii) Licensee Arrangements

### **Options Appraisal and Recommended Procurement Approach**

- 6.2 In considering the proposed procurement approach, there are three broad alternatives available to the Council:
- (i) Bring the service back as an in house operation
  - (ii) Establish an independent Charitable Trust to operate K2 Crawley
  - (iii) Procure an existing operator via a competitive tender (Charitable Trust).
- 6.3 A summary of the strengths and weaknesses of these respective options is presented in Appendix 1.

- 6.4 Based upon the assessment of relative strengths and weaknesses contained in the Appendix, the recommended preferred option is to procure an established leisure operator. Consideration of the further key issues assumes this preferred approach.
- Procurement Process and Variant Bid Proposals
- 6.5 In 2015 the new Public Procurement Directives were issued and became law. The new Regulations fundamentally changed how local government undertook procurement exercises. Prior to the 2015 Regulations, sport related services were deemed a Part B service. The 2015 Regulation have removed the classification of services contracts as either part A or Part B instead all service contracts are subject to the full procurement regime, unless they are expressly excluded, in which case a “light touch” regime will apply. Schedule 3 of the 2015 Regulations lists services subject to the “light touch” regime, which includes “sport facilities operation services”. This contract will therefore be classified as a Light Touch Regime procurement. The advantages of the Light Tough Regime is the flexibility to use any process or procedure the council choose to run the procurement as long as it respects the Treaty principles of transparency, non-discrimination, equal treatment and proportionality. There are some mandatory requirements which include publishing a Contract Notice to advertise the contract opportunity, and the publication of a contract award notice.
- 6.6 In consultation with SLC, the Council’s consultant advisers supporting the procurement process, it has been agreed that the Council will follow an adapted procedure which roughly follows the principals of the PCR 2015 Competitive Procedure with Negotiation Route. The Competitive Procedure with Negotiation has been introduced under the 2015 Regulations and is used as an alternative to Competitive Dialogue when procuring a complex contract where effective negotiation with bidders will be necessary and/or beneficial.
- 6.7 The negotiation stage allows us to tailor our procurement in order to meet our specific needs. The negotiation will be run in successive stages, allowing dialogue and/or amendment to all elements of the specification and tenders, with the exception of the award criteria or the “minimum requirements” of the contracting authority. During the negotiation process we will shortlist suppliers to take a maximum of three to a final tender stage. Following submission of final tenders, no negotiation, of the tender submission is permitted.
- 6.8 As noted above, the recommended procurement process will allow for dialogue with potential bidders and should the Council so wish, revisions to the specification in advance of final bids being submitted. Noted below are the proposed variant bid options which the Council would propose for dialogue with bidders
- (i) Capital Investment Leisure Water: Officers have developed a concept scheme to enhance the leisure water provision and provide facilities of interest to older children (alongside the current provision which primarily attracts younger children) Reflecting the Council’s current capital investment strategy, it would be expected that an investment in such facilities would provide a financial return to the Council. Including this scheme as a variant bid will enable the Council to assess the likely rate of return from bidders and decide whether this option should be included within the final tender submissions. Part of the assessment of the variant bids would consider whether it provides better value for the Council to make the capital investment and achieve the rate of return through the contract payment to the Council.

- (ii) **Planned Maintenance and Capital Replacement:** Under the current leisure management contract, Freedom Leisure are responsible for all reactive repairs and maintenance and replacement of equipment and consumables. The Council has retained responsibility for major capital replacement items and planned maintenance. The current arrangements have worked well and K2 Crawley continues to be well maintained and functions effectively with downtime / non availability of facilities occurring only in exceptional circumstances.

Through the competitive dialogue process, this variant bid will provide the opportunity to consider the financial and operational implications of transferring all of the capital replacement and the planned maintenance responsibilities to the contractor. Once the responses to this option are assessed and the dialogue stage is complete, the final tenders will be submitted with these responsibilities either retained by the Council or included as contractor responsibilities.

- (iii) **Living Wage Foundation:** Since 2014, the Council has been accredited to the Living Wage Foundation. Reflecting this, bidders will be asked to provide a variant bid compliant with Living Wage Foundation' wage rates.

**Proposed Contract Scope:**

- 6.9 The current Leisure Management Contract scope incorporates K2 Crawley, the gym and fitness facilities and cafe at the Bewbush Centre and the Broadfield 3G Pitch and Pavilion. It is recommended that these facilities form a cohesive group which all bidders would have relevant experience in managing and this facility scope is therefore proposed to be retained.

**Proposed Contract Length:**

- 6.10 The feedback from the Council advisers is that contracts of between 15 and 20 years typically generate the most 'market interest' and consequently secure the most advantageous contract offers for the Council. It is recommended that the contract term for K2 Crawley is for a period of 15 years, with the option to extend for a further 5 years, should the Council (and the contractor) choose to do this at the end of the proposed contract term.

**Evaluation Model:**

- 6.11 It is proposed that the evaluation model is based on a split of 40% price and 60% quality. Allowing for 60% of the weighted evaluation to be quality based provides the opportunity for the Council to ensure they are appointing a contractor who will provide good quality services and is best placed to respond to the Council's priorities set out in the service specification. The quality evaluation will incorporate an assessment of a number of priority aspects including, increasing participation, environmental sustainability, customer service excellence and customer engagement, sports development and working in partnership to improve health and well being, programming and equity proposals, development and management of staff, fees and charges and asset management. Each of the quality areas will be weighted in order of importance to the Council.
- 6.12 With regard to the financial evaluation, it is proposed that the Council sets a minimum threshold, below which the Council reserves the right not to accept a tender. This effectively communicates to bidders the minimum financial expectations which the Council have for the contract. Currently the Council receive a payment from Freedom Leisure of £220,000 per annum. The Council's advisors have prepared a 'shadow bid' and proposed that the minimum payment threshold should be set at £450,000 per annum. From that base position, bidders would score higher the greater the payment they propose to the Council.

### Car Parking

6.13 Availability of car parking at K2 Crawley can be an issue for customers at peak times and commonly is the main area of customer complaint. The ability of bidders to project increases in customer numbers and therefore to improve the financial payment to the Council is likely to be encumbered by these concerns regarding car parking. To address this, the following are proposed

- (i) To respond to current capacity requirements and provide parking for potential expansion of facilities, a scheme to remodel the existing car park has been prepared. This will provide an additional 79 car parking spaces at a budget cost £170,000. It is recommended that a supplementary capital estimate of £170,000 is requested to provide this additional car parking and that, subject to planning and detailed design, this scheme be implemented in advance of the new contract start date. These proposed enhancements to the car park will be communicated to bidders as part of the tender process.
- (ii) As part of the dialogue process with operators, the Council will discuss with bidders how they would support the Council's broader sustainability policies and promote alternative methods of transport to K2 Crawley customers. This would also include discussions regarding the car park management. Travel plan proposals can also form part of the weighted quality evaluation under the environmental sustainability consideration.
- (iii) If the capital investment to provide enhanced leisure water proceeds, this proposal would need to consider whether any further mitigating measures would need to be implemented.

### Licensee Arrangements

6.14 A number of licensee arrangements are in place at K2 Crawley which provide specialist management of specific facilities / services. These include Hi Sports (climbing wall), Hawth Gymnastics (gymnastics hall), The Treatment Rooms, Premier Training, Black Belt Academy, Day Nursery / Crèche and the Sports Nutrition Shop. These licences are held by the management contractor as occupier of K2 Crawley. To provide continuity for these operations and for the customers who use these services, it is proposed that these arrangements are extended into the new contract period with the incoming management contractor required to retain these existing licensees on pre agreed terms.

### Member Involvement

6.15 The proposed procurement option, process and evaluation model were presented to Members at a Full Members Seminar on 13<sup>th</sup> June 2017 and will be considered by the Overview and Scrutiny Commission on 26<sup>th</sup> June 2017. Any comments can be provided verbally to Cabinet where appropriate. To ensure Members continued involvement in the process, it is proposed that a Cross Party K2 Management Working Group to oversee the procurement and tender evaluation process be established.

## **7. Implications**

7.1 Financial Implications: The Council currently receives a contract payment of £220,000 per annum from Freedom Leisure. This is offset by expenditure on planned maintenance and capital replacement which for K2 Crawley, was £356,000 in 2015/16 and £96,000 in 2016/17.

7.2 The preferred procurement route and proposed evaluation model will seek to balance commercial considerations which provide an improved revenue position for the Council with broader policy considerations including Living Wage, Wellbeing and

Sports Development. The Council's consultant advisers have assessed the contract potential and advised that the Council should set a base bid minimum threshold of a payment of £450,000 per annum to the Council. This effectively communicates to bidders the minimum the Council would expect to receive and it would be reasonable to assume the Council will receive a payment in excess of the minimum threshold. It is noted compliance with the Living Wage variant bid may reduce the minimum payment (as compared with the base bid proposals).

- 7.3 Legal and Procurement Implications: The Leisure Management Contract is one of the biggest the Council procures, it is imperative therefore that the Council ensures compliance with the Public Procurement Regulations and OJEU requirements. The Council's procurement and legal teams are providing comprehensive support and advice on this project to ensure compliance and are part of the core project team. In addition, the project is supported by consultants SLC, who have expertise in the field of leisure procurement.
- 7.4 Environmental Implications: Through joint work between the existing leisure management contractor and the Council, electricity and gas consumption at K2 Crawley has reduced by 63% and 6% respectively over the 10 years of the current contract. Environmental considerations including accreditation to ISO 14001 will form part of the evaluation weighting to help to ensure these Council priorities are reflected in the management practice at K2 Crawley.

## **8. Background Papers**

- 8.1 K2 Crawley: Procurement Options Appraisal Report – April 2017. Sport and Leisure Consultancy

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## Evaluation of Procurement Options

<b>In House Operation</b>	
<b>Strengths</b>	<b>Weaknesses</b>
<p>An in house operation could enable the Council to benefit from any upturn in market conditions or in the economy during the contract period. (Noted that the reverse, ie a downturn, also applies.</p> <p>There is more direct control of an in house operation (Noted, provisions exist within the contract should there be concerns about particular aspects of contractor performance. Moreover, a procurement process would seek to ensure an appropriate balance between cost and quality so that an appointed operator is delivering services to the Council's required quality standards).</p>	<p>The Council is not able to recover VAT on income or secure Non Domestic Business Rate Relief. The majority of the existing leisure centre management organisations are Charitable Trusts and these financial benefits are available to those Trusts. The VAT and NNDR implications of taking the service in house would increase the cost to the Council by approximately £600,000 per annum.</p> <p>Taking the service in house would include transferring the existing staff employed at K2 Crawley to the Borough Council's terms and conditions of employment. In addition to the VAT and NNDR considerations, these costs, (in particular the employer costs associated with the average salary pension scheme) would add costs, in excess of a further £600,000 per annum to the Council. The total additional direct cost is therefore likely to exceed £1.2 million.</p> <p>There would be further increases in central support costs (HR, Finance, ICT) which would need to be reflected in the cost of the service.</p> <p>As a competitive trading service, leisure centre income is open to market variability. In particular, competition from private sector health and fitness chains can significantly impact leisure centre income. An in house service would increase the broader Budget Strategy risks to the Council.</p>

<b>Establishing an In House Trust Operation</b>	
<b>Strengths</b>	<b>Weaknesses</b>
<p>Potentially the Council could retain greater day to day control of an in house trust. It is noted however that to retain its independent charitable status, the Council could not be seen to exert any significant influence on the trust. Equally, the Council would be bound by the terms of the service specification and contract which it issues as part of the tender process.</p>	<p>To comply with procurement regulations and to support demonstration of Best Value, the Council would be expected to test any in house trust bid against external bidders as part of a competitive process. K2 Crawley is an established prestigious centre of regional significance and discussions with potential bidders indicate there would be strong market interest and the Council is likely to receive high quality and competitive bids. The Council's consultant advisers have indicated they are not aware of examples where an in house trust has been able to effectively compete against an established multi contract organisation. This is largely because the larger established trusts</p> <ul style="list-style-type: none"> <li>(i) Are able to allocate central costs across multiple contracts, typically resulting in central costs lower than single site operations.</li> <li>(ii) Are able to dedicate greater resources and investment in branding, IT and new service developments which can then be rolled out across their Group with greater opportunity to recover investment across multiple sites.</li> <li>(iii) Are able to achieve greater economies of scale in purchasing.</li> </ul> <p>Without a trading history, an in house trust would not achieve the Council's turnover threshold requirement to be able to tender for the K2 Crawley contract.</p> <p>Notwithstanding the improbability of an in house trust 'winning' in a competitive process, the Council's consultant advisers have indicated that it would normally take up to 18 months to set up an in house trust to a position where it could bid in a competitive process. This would necessitate either an extension to the existing contract or a requirements to temporarily bring the service back in house. Either of these options would delay savings envisaged from the new</p>



	<p>contract and could potentially add to revenue costs in the short term.</p> <p>Although in theory an in house trust transfers risk from the Council, in practice, should an in house trust experience financial losses, the absence of reserves or other contracts on which to draw would mean much of the risk is retained by the Council.</p>
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<b>Procurement of an Established Leisure Operator</b>	
<b>Strengths</b>	<b>Weaknesses</b>
<p>K2 Crawley is a respected prestigious regional leisure centre. Informal dialogue with potential bidders indicates there would be a lot of interest in managing K2 Crawley and the Council is likely to receive competitive and favourable bids if managed through a competitive procurement process.</p> <p>A competitive tender process facilitates financial risk transfer and greater stability for the Council's budget strategy.</p> <p>Dependent upon the preferred procurement process, this option enables the Council to enter into a dialogue with bidders and secure experience and expertise from a range of leisure management companies. Drawing on these inputs can help the Council to achieve improved financial and quality outcomes.</p> <p>With consolidation to a smaller number of larger operators, it is likely that the successful bidder would be operating many other local authority contracts across the region if not across the country. Such established operators typically bring Group expertise in areas such as health and fitness, repairs and maintenance, environmental sustainability, customer engagement, sports development and health and wellbeing. Such Group expertise will typically ensure innovation and industry best practice are utilised and deployed at K2 Crawley.</p>	<p>Should there be performance concerns or should the contractor seek to operate in a manner not in keeping with Council policy or expectations, it could be harder to address such concerns (relative to an in house service). Although this potential does exist, the Council will seek to ensure the weighted evaluation criteria support selection of a high quality contractor which minimises this risk.</p> <p>Equally the service specification and contract will contain provisions which enable the Council to take action should performance be a concern.</p>