

PART 2 – CONFIDENTIAL FACTS AND ADVICE

MD2126

Title: Crystal Palace National Sports Centre – Leisure Management Contract Extension

Information may have to be disclosed in the event of a request under the Freedom of Information Act 2000. In the event of a request for confidential facts and advice, please consult the Information Governance team for advice.

This information is not for publication until the stated date, because:

This paper contains information in relation to procurement decisions relating to the Crystal Palace National Sports Centre and associated commercial and legal risks, the disclosure of which would prejudice the:

- commercial interests of the GLA when re-procuring the Leisure Management services.
- ability of GLA to consider fully legal risks relating to the proposed extension

Date at which Part 2 will cease to be confidential or when confidentiality should be reviewed: **Review 30 December 2018**

Legal recommendation on the grounds of keeping the information confidential:

In the event of any request for access to the information contained in this document under section 1 of the Freedom of Information Act 2000 ("the Act"), it is considered that access may be denied on the basis that the disclosure of such information would prejudice the commercial interests of the GLA, as its release could have an adverse impact on the GLA's ability to secure best value when the leisure service is procured as planned in the next three years. To this end, the exemption from release of the information set out in part 2 of this report is covered by section 43 of the Act. The information could also be viewed as information which is in part subject to legal professional privilege which is exempt under Section 42 of the Act, legal advice having been obtained in respect of the proposed extension related procurement law risks.

Section 1 of the Act creates the general right of access, which provides that any person making a request for information to a public authority is entitled:

- to be informed in writing by the public authority whether it holds information of the description specified in the request; and
- if that is the case, to have that information communicated to him/her.

Part II of the Act contains a number of exemptions from disclosure for certain classes of information. In particular, section 42 covers information which is the subject of legal professional privilege and section 43 of the Act which provides that information is exempt information if its disclosure under the Act would, or

would be likely to prejudice the commercial interests of any person (including the public authority holding it).

Here information is considered commercially sensitive as its release could prejudice the commercial interests of the GLA, as its release could have an adverse impact on the GLA's ability to secure best value when the leisure service is procured as planned in the next three years and is in part subject to legal professional privilege.

The section 42 and 43 exemptions are qualified exemptions and its use is therefore, subject to a public interest assessment.

Legal Adviser - I make the above recommendations that this information should be considered confidential at this time

Name: Liam Humphries

Date: 3 July 2017

Once this form is fully authorised, it should be circulated with Part 1.

Confidential decision and/or advice:

This Part 2 should be read in conjunction with Part 1.

1. Background

- 1.1 The London Development Agency (LDA) and subsequently GLAP have occupied the NSC under a 125 year lease from LB Bromley. Greenwich Leisure Limited have provided leisure management services since 2004 and their contract has previously been extended in 2009, 2014 and 2016. Their current contract expires on the 31st March 2018. GLAP has been responsible for the NSC since 2012.

2. Commercial and Procurement Issues

- 2.1 Subject to approval required by this MD the GLA appoint Greenwich Leisure Limited to provide the management and operating services for 2+1 years. The total value is £850,000 p.a. (up to £2,550,000 for the term of the contract).
- 2.2 There are procurement risks associated with the further proposal to extend the GLL contract for the fourth time. Whilst it is acknowledged that a challenge has not been made to date, the longer the extension and breach of the procurement regulations the greater the risk of challenge. A successful challenge could result in a court setting aside the contract with prospective effect, impose a civil penalty at a "dissuasive" level and possible award of damages to the economic operator which made the challenge.
- 2.3 A commercial decision has been taken to proceed with the extension and to not competitively procure the required services because it is not practical to do this when the future demand for the NSC is uncertain. GLAP are only offering short term contract. It has been determined that there would be limited number of parties willing to provide the service, as GLL do, on a non-profit making basis. In addition, there are financial benefits in retaining GLL because it has a charitable status and

benefits from rates relief. It is considered that while specialist service providers would be interested in a long term (10+ years) contract procured against a high level of certainty, the risks and benefits associated with a short-term contract against a backdrop of a full review into the future of the NSC, would not be attractive to the market.

- 2.4 Officers are aware of the potential procurement risks of extending the contract again. On balance officers have determined the risk is manageable as the demand for the use of the stadium is still uncertain and further research is required. A full procurement exercise is therefore not considered appropriate until the future demand for the use of the facilities is clearer and a long-term contract can be offered.
- 2.5 This approach has been agreed with TfL Commercial.

3 Legal Comments

- 3.1 Paragraph 9 of the GLA's Contracts and Funding Code (the "Code") requires the GLA to undertake a procurement process in compliance with the Public Procurement Regulations ("Regulations") for contracts of values exceeding £150,000. Officers are aware of the procurement risks of not complying with the Regulations and have indicated in section 2 above the reasons for an exemption from the Code. Therefore, the Mayor may authorise an exemption from the Code, if satisfied with the content of this report.

Appendices