


<p><b>London Borough of Hammersmith &amp; Fulham</b></p> <p><b>CABINET</b></p> <p><b>3 DECEMBER 2018</b></p>	
<p><b>FACILITIES MANAGEMENT STRATEGY FOR TERMINATION OF TOTAL FACILITIES MANAGEMENT CONTRACT</b></p>	
<p><b>Report of the Cabinet Member for Finance and Commercial Services – Councillor Max Schmid</b></p>	
<p><b>Open report</b> A separate report on the exempt part of the Cabinet agenda provides financial information.</p>	
<p><b>Classification - For Decision</b> <b>Key Decision: Yes</b></p>	
<p><b>Consultation</b></p> <p>Strategic Leadership Team, Finance, Commercial, Legal and Property and Facilities services have been consulted when drafting this report.</p>	
<p><b>Wards Affected:</b> All wards</p>	
<p><b>Accountable Director:</b> Hitesh Jolapara, Strategic Director, Finance and Governance, London Borough of Hammersmith, and Fulham</p>	
<p><b>Report Author:</b> Gerald Frith Assistant Director Property and Facilities</p>	<p><b>Contact Details:</b> Tel: 020 8753 7554 Gerald.Frith@lbhf.gov.uk</p>

## 1. EXECUTIVE SUMMARY

- 1.1. The proposed termination of the Total Facilities Management (TFM) contract is currently being negotiated by the council's commercial team.
- 1.2. Approval is sought for the Chief Executive to sign the termination agreement for the TFM contract currently held by Amey.
- 1.3. The termination of the Amey linked three borough TFM contract will require a replacement contract strategy for the Facilities Management Maintenance and Operational services, to ensure that a new service model can be procured to ensure future statutory compliance and effective / efficient maintenance of the council's corporate property portfolio.

- 1.4. The early cessation of TFM contracts across local government has been well documented over the initial five years of the Amey contract.
- 1.5. This report identifies the options for a new H&F service model to replace the existing contract and makes recommendations for the most efficient option for the Council.
- 1.6. The option study – attached at Annex A - recommends the current contract be transferred to an in-house management team, using both in house and specialist contract staff to undertake the future maintenance and operation of the council's Facilities Management (FM).
- 1.7. The preferred service model will provide a direct customer service to the council and the public visiting council properties and through the transformation in FM will support the H&F vision to be the best council. The vision includes taking pride in our borough and civic and ceremonial buildings and facilities is at the heart of this.

## **2. RECOMMENDATION**

- 2.1. That the Chief Executive, in consultation with the Cabinet Member for Finance and Commercial Services, be delegated authority to vary the Total Facilities Management Contract and enter into any legal agreement as is necessary in order to enable the contract to be terminated.
- 2.2. That the Chief Executive, in consultation with the Cabinet Member for Finance and Commercial Services, be delegated authority to terminate the Total Facilities Management contract once commercial terms have been finalised.
- 2.3. That the council's future facilities management maintenance and operations is undertaken by an in-house management team supported by in-house staff and specialist contractors.

## **3. BACKGROUND**

- 3.1. In 2013 the council entered into a three-borough combined TFM contract with Amey Communities Limited.
- 3.2. The original contract was based on a service matrix which appears not to have taken account of all of the actual specific assets that required maintenance. The contract defined the requirement for maintenance and operational works to be undertaken in accordance with good industry practice, which should have seen the contractor undertaking a full asset survey within the first 60 days of the contract award. However, it has become apparent that the contractor did not identify many of the installed assets at this time, as recent surveys carried out for the council have identified numerous additional assets not on Amey's maintenance schedule.

- 3.3. In addition, the service provided by Amey has not met the contractual requirements for the three boroughs leading to the recommendation to terminate the tri-Borough contract.
- 3.4. In order to provide an effective FM service for the Council's corporate estate following the demise of the TFM contract, an options study has been completed of future service models (see Appendix A).
- 3.5. The options are:
  - To let a TFM contract for all the Corporate property portfolio.
  - To bring the FM in-house.
  - To provide a FM service using a combination of i. and ii. above.
- 3.6. The budget requirement for the proposed model will be reviewed against future changes to the Council's overall delivery of FM services. The anticipated transition of Housing Revenue Account (HRA) properties, facilities management and maintenance to an in-house delivery model will provide an opportunity to review H&F Council operational and procurement practices, seek financial efficiencies and improve service outcomes across both in house and HRA provision. This is anticipated in 2020.
- 3.7. In order to accommodate the synergies which will occur as housing maintenance moves to an in-house model in 2020, the proposal for the FM in-house service team includes arrangements to recruit its additional technical staff on a 1 year fixed term basis and for specialist contracts to be let on a 1 year basis.
- 3.8. Once the new corporate service model is embedded, programmed for the end of the current school year, the in-house service team will positively identify opportunities to employ apprentices, to supplement resources as part of their succession planning.

#### **4. REASONS FOR DECISION**

- 4.1. The reason for the recommendations in this report is that the existing TFM contract and the associate three borough LINK team has been significantly unsuccessful in providing a compliant and effective FM Maintenance and Operations service to the council's property portfolio.
- 4.2. The legal requirement to ensure that all of the council's properties have been maintained in accordance with the statutory regulations has not been substantially demonstrated.

#### **5. PROPOSAL AND ISSUES**

- 5.1. The proposal is to recruit a proactive, versatile and flexible team with appropriate hands on specific hard and soft service FM experience and associated qualifications, who will make a point of defining and understanding the challenges of each of the portfolios properties first hand. The roles will be part office based, but mainly out on site, with the exception of the helpdesk

team, ensuring an effective and visible service is provided to council customers and visitors to corporate buildings.

- 5.2. The in-house help desk will provide a first point of contact for all services, whilst ordering works through the helpdesk software will ensure accurate recording of data, which will be used to produce regular reporting on volume and percentage of tasks completed, together with associate remedials to ensure comprehensive compliance. This will be provided to the current industry good practice standard maintenance regime (Heating, Ventilation and Contractors association Schedule SFG20).
- 5.3. Future projects for replacements, refurbishments and new works will be managed by a Project Programme Manager, who will also undertake the physical project management in association with the members of the management team, to ensure and be accountable for effective results. In addition, the Project Programme Manager will also provide the team with continuing professional development in Project Management. Designs for projects will be initially reviewed in-house with specialist areas being reviewed by appropriate consultants.

## **6. OPTIONS AND ANALYSIS OF OPTIONS**

- 6.1. The option study, Appendix A, considers the three options available for the new service model these being:
  - Replace existing linked tri-Borough TFM contract with a single council TFM contract,
  - Undertake all works with an inhouse team,
  - Undertake the FM services with a mixture of in house staff and a team of specialist outsourced contractors.
- 6.2. In appraising the options, due consideration has been given to a number of key factors. The option study, Appendix A, provides comprehensive detailed examples of these reasons including:
  - The lack of success by various organisations of maintaining a successful TFM, due to the inadequacies of a single contractor aligned to their absolute reliance on third party sub-contractors,
  - The ineffectiveness of employing **all** specialists in house, as the workload is not commensurate with full employment of specialist staff throughout the year, provision of suitable cover in times of absence, aligned with the need to employ additional specialist managers and maintain competence through specialist training and Continuing Professional Development.

## **7. CONSULTATION**

- 7.1. Consultation on the proposed recommendation has been undertaken with the following teams:
  - Strategic Leadership Team
  - Corporate Finance
  - HR
  - Commercial

- Risk Management
- Economic Development team
- IT
- Property and Facilities team

7.2. Should Cabinet approve the recommendations, the Human Resources service will undertake a 45 (working) day consultation with the Property and Facilities staff and unions in respect of the new structure and roles.

## **8. EQUALITY IMPLICATIONS**

8.1. As required by Section 149 of the Equality Act 2010, the Council has considered its obligations regarding the Public Sector Equality Duty and it is not anticipated that there will be any direct negative impact on groups with protected characteristics, as defined by the Act, from the termination of the current facilities management contract and the transfer of duties to an in-house management team, supported by in-house staff and specialist contractors.

8.2. Implications completed by: Peter Smith, Head of Policy & Strategy, tel. 020 8753 2206.

## **9. LEGAL IMPLICATIONS**

9.1. A draft deed of settlement and variation has been produced which will vary the TFM contract to enable Royal Borough of Kensington and Chelsea and Westminster City Council to exit the TFM contract and provide clarity as to the terms which apply going forward between Amey and the council (until termination or expiry of the TFM). The council, advised by Bevan Brittan LLP, will seek to ensure that the council is not left exposed or in a worse position as a consequence of such variation. Entry into this deed will provide the council with flexibility to negotiate its own terms of exit with Amey in the absence of the other two councils.

9.2. Following agreement of the terms on which the council will terminate its TFM arrangements with Amey, such terms will be documented in a legally binding deed of settlement/termination which will end Amey's provision of services under the TFM contract.

9.3. Legal Implications at 9.1 and 9.2 completed by Bevan Brittan LLP

9.4. In respect of recommendation 2.3, under paragraph 4.7 of the Scheme of Delegation to Officers within Part 3 of the Constitution (Responsibility for Functions), the Chief Executive and Chief Officers are able to "undertake, in consultation with the Director of Corporate Services, minor re-organisations of staff structure (directly affecting a maximum of 25 posts) provided no post subject to Member appointment procedures is affected, there is no increase in cost and the relevant Cabinet Member is advised in advance about forthcoming minor re-organisations." By implication, any reorganisation involving more than 25 staff or involving increase in costs need to be approved by the Cabinet or Leader.

- 9.5. The proposals in this report to bring the TFM service in-house do involve the reorganisation of more than 25 staff within the council, and so this requires the approval of the Cabinet or the Leader.

Legal Implications at 9.4 and 9.5 completed by Hector Denfield, associate with Sharpe Pritchard LLP on secondment to the council; hdenfield@sharpepritchard.co.uk

## **10. FINANCIAL IMPLICATIONS**

- 10.1. As set out in the exempt part of the agenda.

## **11. IMPLICATIONS FOR BUSINESS**

- 11.1. The implications for local business is that they will have the opportunity to tender for the various packages of works which will be procured as part of the new service model, consultation with local businesses has commenced with the Economic Development Team.
- 11.2. Please see attached Appendix C, a breakdown of the proposed options for outsourcing maintenance and repairs to specialist contractors.
- 11.3. Implications verified/completed by Albena Karameros, Economic Development Team, tel. 020 7938 8583.

## **12. COMMERCIAL IMPLICATIONS**

- 12.1. The termination of the current FM Contract with Amey will result in a number of services needing re-procurement.
- 12.2. The future Maintenance and Operations model is proposed as a mixture of in-house management team supported by in-house staff and specialist contractors.
- 12.3. The specialist contractors must be procured in line with the Council's Contracts Standing Orders (CSOs) and the Public Contracts Regulations (PCR) 2015.
- 12.4. Following approval of the new proposed model of FM services delivery, a procurement strategy will be developed and presented to Cabinet, in line with the CSOs requirements.
- 12.5. Implications verified/completed by: Andra Ulianov, Procurement Consultant, tel. 0208 753 2284.

## **13. IT IMPLICATIONS**

- 13.1. IT Implications: New staff members will require IT equipment and access to H&F IT Systems in alignment with job requirements and the desktop strategy. The

AD Property and Facilities advises the following: *“There are minimal IT implications for the proposed service model as the council already have a Computer Aided Facility Management (CAFM) software package in place. This software (Technology Forge) will be upgraded to allow for the additional Helpdesk and Cloud working requirements. In terms of hardware there will be a requirement to purchase tablets for on-site use by in-house management and operatives”*.

13.2. IM Implications: All new staff members must complete the mandatory H&F Information Management and Data Protection online training modules.

13.3. The contract with interim staff and contractors may need to include H&F’s new data protection and processing schedule – which is compliant with the General Data Protection Regulation (GDPR) enacted from 25 May 2018. It is assumed that appropriate data protection safeguards will be put in place as part of the H&F HR hiring policy and the employment contract.

13.4. The collection, processing, storage and disposal of data resulting from public consultation – such as with local businesses - must be handled in compliance with the General Data Protection Regulation. As such, Privacy Impact Assessments will need to be completed to ensure all potential data protection risks in relation to consultations are properly assessed with mitigating actions agreed and implemented.

13.5. Implications verified/completed by: Karen Barry, Strategic Relationship Manager, tel. 0208 753 3481.

## **14. RISK MANAGEMENT**

14.1. The proposed service model significantly reduces the risk of the current one company provision of a TFM contract.

14.2. The following requirements will be incorporated in the new service model to significantly reduce the risks associated with its provision;

- A project board consisting of Corporate Finance, H&S, HR, Legal, Commercial and Property and Facilities to ensure the effective mobilisation of the new service model,
- Provision of a state of the art CAFM software package which will monitor and record compliance requirements and associated remedial completion,
- The provision of a Compliance Manager role to ensure compliance is comprehensively achieved,
- The operation of a Health and Safety compliance system within the CAFM to ensure staff and contractors are aware of the characteristics of the workplace in which they are required to undertake tasks, including the location of any sealed asbestos, confined spaces, COSHH implications and risks from roof / external working,
- The provision of more than one specialist contractor undertaking maintenance and compliance works to ensure continuity in the failure or lack of response of a particular contractor,

- A structure of CPD for all in-house staff to ensure full understanding of the risks and requirements of their roles,
- All works will be risk assessed and risks mitigated prior to start on site,
- A permit to work system for Electrical, Pressure systems works, confined spaces and roof working will be put into operation,
- A financial package within the CAFM software to ensure budgetary requirements are compliant,
- A risk log will be maintained within the CAFM system and regular reports will be reviewed regularly by the Property and Facilities Senior Management team,
- Regular compliance audits by the Corporate Health and Safety team will be welcomed.

14.3. Implications verified by Michael Sloniowski Risk Manager, tel. 020 8753 2587.

## **15. OTHER IMPLICATIONS**

### **15.1. HR / TUPE**

- Following a decision on the proposals outlined in this paper, and the outcome of ongoing termination negotiations with Amey the council will commence consultation with the internal Corporate FM employees, presenting the new structure, inviting feedback before agreeing and implementing the new structure i.e. confirming employees in the new structure as appropriate and where / when appropriate, considering employees at risk of redundancy, seeking suitable alternative roles, ending fixed term contracts, agency workers / contractors and secondments etc.
- Consultation will also begin for the Amey employees who are in-scope and have either been identified as transferring with their role to the new structure or, where there is no role in the new structure, at risk of redundancy.
- HR is currently carrying out due diligence with their HR counterparts in the other boroughs as well as Amey HR to determine a total 'in scope' list for the tri-borough TFM contract before breaking this down into boroughs to determine the group of employees that need to be consulted with.
- It is already clear that the termination of the Amey TFM tri-borough contract would be covered under TUPE as a service provision change (when work is outsourced, re-tendered or in sourced). TUPE refers to the "Transfer of Undertakings (Protection of Employment) Regulations 2006" as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014" and exists to protect employees' rights when the organisation or service they work for transfers to a new employer.

It is envisaged that there will be two distinct pieces of work with the Amey employees:

- Simultaneous TUPE and redundancy consultation for employees identified as being involved in services currently under contract to Amey that will not be



included / required in the new structure. This is because the liability, both legally and financially, for ceasing these role(s) and therefore the incumbent(s) sits with the Council. In order to carry out simultaneous TUPE and redundancy consultation this needs Amey to consent, if they do not agree then the council will be required to TUPE the employees then begin redundancy consultation which will increase the timeframe.

- Direct TUPE consultation with employees, either via unions or employee representatives, identified as being involved in services / roles that will transfer to the Council. The length and complexity of which will depend on the measures (changes / harmonisations of terms) that may be proposed.
- These distinct pieces of work will require a detailed plan and timeframe which has already been scoped out and will be regularly reviewed, updated and discussed at the project board throughout the process.
- TUPE is a complex piece of legislation and has impacts for the employer who is making the transfer (also known as the **outgoing employer** or the transferor) and the employer who is taking on the transfer (also known as the **incoming employer**, the 'new employer' or the transferee) as well as significant financial costs where an organisation gets it wrong. It is for this reason that a specialist has been engaged to ensure that LBHF can fulfil its legal obligations and minimises risks during this period
- Implications verified / completed by: Jennifer Cometson, TUPE Consultant, tel. 07554 222678.

## **16. BACKGROUND PAPERS USED IN PREPARING THIS REPORT**

**None**

### **LIST OF APPENDICES:**

*Appendix A Option Study*

*Appendix B Financial Appraisal (contained in the exempt part of the agenda).*

*Appendix C Proposed split of In- House and Outsourced Maintenance and Operations staff*