

Executive Decision Report

Decision maker and date of Leadership Team meeting or (in the case of individual Lead Member decisions) the earliest date the decision will be taken	Leadership Team – 26 February 2018 Forward Plan reference: 05216/18/K/AB Leadership Team Portfolio: Deputy Leader and Lead Member for Environment, Leisure and Resident Services	 THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA
Report title	REVIEW OF FACILITIES MANAGEMENT	
Reporting officer	Richard Egan, Director of Corporate Property	
Key decision	Yes	
Access to information classification	Public (Part A) with Confidential/Exempt (Part B) Appendix which is not for publication. Part B of this report is exempt from disclosure by virtue of the Local Government Act 1972 Schedule 12A, Part 1, paragraph 3 (as amended), in that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information)	

1 EXECUTIVE SUMMARY

- 1.1 This report seeks the Leadership Team's approval to the Council to approve the implementation of the transformation of FM services for the corporate estate. This requires the early termination of the Total Facilities Management (TFM) Project Agreement and for the Council's Facilities Management (FM) Team to arrange the supply of replacement FM services through a mixture of in-house and external, procured, resources.
- 1.2 The aspects of this approval are:
- 1) Mutual termination of the existing TFM Project Agreement with Amey Community Limited
 - 2) Implement a mobilisation team to support the transition
 - 3) Amend the existing LINK tri-borough management team to form a new sovereign based council specific facilities services function, remaining within Corporate Property

- 4) Establish a new blended in-house and outsourced delivery model to provide direct control of service delivery and customer facing services along with third party service delivery
- 5) Delegate authority to the Director of Corporate Property to be exercised in consultation with the Deputy Leader and Lead Member for Environmental Health, Leisure and Residents' Services for the appointment of the outsourced service contracts following competitive procurement.

2 RECOMMENDATIONS

- 2.1 Following a full review of the tri-borough Total Facilities Management (TFM) Project Agreement (i.e. the contract) the Leadership Team is asked to agree these proposed changes to the current FM service model.
- 2.2 Change the FM service model from the single Total Facilities Management (TFM) Project Agreement that governs the supply of FM services to the three boroughs, to a sovereign performance focused multi-supplier model comprising a combination of in-house and external supplied services with a more direct influence on compliance, performance and direct customer engagement.
- 2.3 Agree to strengthen the capacity and capability of the FM Team providing a new FM service model that will have in-house delivery functions for direct, customer facing services and technical / contract management expertise to manage the external supplied services to achieve best value-for-money and the required outcomes.
- 2.4 Repurpose the remaining five years of the current 10-year TFM budget to deliver in-house services and procure FM services through a number of competitively tendered contracts governed by existing framework agreement terms accessed through Fusion 21 Limited.
- 2.5 Approve mobilisation costs to support the transformation.
- 2.6 To delegate authority to implement the recommendations to the Director of Corporate Property to be exercised in consultation with the Deputy Leader and Lead Member for Environmental Health, Leisure and Residents' Services.
- 2.7 If any additional transitional costs arise or an ongoing budget shortfall is identified once the newly proposed delivery model has been fully costed, the business case will be brought back to leadership team for review of potential future funding arrangements.

3 REASONS FOR DECISION

- 3.1 The recommendations are to enable the TFM Project Agreement to terminate early by mutual agreement and to arrange the supply of replacement FM services through a mixture of in-house and externally procured services.
- 3.2 This recommendation proposal represents the best consideration reasonably obtainable.

4 BACKGROUND

- 4.1 In January 2012 Cabinet agreed to a single supplier tri-borough Total Facilities Management (TFM) solution to cope with reduced funding emanating from the central Government's structural deficit. A ten-year TFM Project Agreement was awarded to Amey Community Limited through the Competitive Dialogue procedure. This enabled the complex contracting arrangements required to be aligned in the best interests of each sovereign borough.
- 4.2 From its start in October 2013 the aim was to align the delivery of FM services across the three boroughs and through this drive efficiencies, enable economies of scale and ensure the assets and services of each borough were, as a minimum, statutorily compliant.
- 4.3 In parallel with the procurement a new in-house client team called LINK was set up to manage the TFM Project Agreement on behalf of the three boroughs. This client team was responsible for managing performance and contract compliance.
- 4.4 The TFM Project Agreement transferred budget and risk from the council's to the incumbent supplier, including strategic management and innovations. The FM services supplied through the TFM agreement include:
- Hard FM services
 - Cleaning (including windows), confidential waste disposal & pest control
 - Catering & hospitality
 - Landscaping & grounds maintenance
 - Mailroom, reprographics, portorage, archival and stores management
 - Reception and Front of House
 - Security Services
 - Management & Helpdesk
- 4.5 The quality of FM service supplied to the Council is extremely important. The services must be performed in a way that ensures each council's assets and services, as a minimum, comply with all relevant statutory regulations and meet the operational demands to provide excellent customer service. The outcome of the FM review concluded that greater emphasis is required to directly engage with end users and our customers.

5 PROPOSAL AND ISSUES

- 5.1 The overarching proposal is to move to sovereign provision of relevant FM services under an internal management with a multi-vendor, multi-sourcing model as soon as practically possible. This will be delivered by in-sourcing of a range of services, and the re-tendering of specialist services to third party providers, effectively moving away from the single large-scale outsourcing arrangement currently in place via the TFM Project Agreement.
- 5.2 The proposal is to manage all aspects of an early termination by mutual agreement and to transition to the new model includes:

- a) Ensuring the FM Team has sufficient technical and contract management expertise to achieve best value-for-money through the new FM service model
- b) Supplying or managing the supply of some Soft FM services with a combination of current in-house resources and new hires. It is recognised that a number of Amey Community Limited and their sub contracted supply chain employees may be eligible to transfer under the TUPE Regulations
- c) Procuring a number of FM services, currently supplied via the TFM Agreement, through further competitive tendering under the Fusion 21 framework agreements of which the Council is already a member.
- d) Contracts with the successful suppliers from the above competitive tender process are anticipated for:
 - 1) Hard Facilities Management services (Mechanical & Electrical services)
 - 2) Soft Facilities Management services (Cleaning & Security)
 - 3) Building Fabric services
 - 4) Asbestos Surveys
 - 5) Asbestos Removal/Management
 - 6) Grounds Maintenance
 - 7) Lifts (servicing, maintenance & repair)
 - 8) Software (to support FM operations)

5.3 The forecast timeline (below) to achieve this proposal is likely to change, by how much will depend on the outcome of discussions with the incumbent supplier.

- **February;** ongoing discussion and information sharing with the incumbent supplier, service transition team established and the formulation of tender documents
- **March;** ongoing discussion and information sharing with the incumbent supplier, invitations to tender sent to potential suppliers for them to compete to supply FM services
- **April;** evaluation of tenders/presentations, approval of recommendations
- **May;** award contracts, transfer of services to FM Team starts
- **June to October;** remaining transfer of services, phased supply of FM services through contracts awarded to suppliers' party to framework agreements

6 OPTIONS AND ANALYSIS

6.1 The FM review has considered a range of service delivery options to meet the Councils future requirements for FM Service delivery.

6.2 **Option 1 Retain the existing TFM Agreement and continue to work with Amey Community Limited to obtain the desired service delivery** – This option is discounted as the operational model does not allow the council to have

the necessary close engagement with building users, end customers and community engagement.

6.3 **Option 2 To exit the existing TFM Agreement and implement an alternative service delivery model.** Three alternative solutions have been considered to achieve this:

- 1) **out-source**; procure another single supplier TFM service
- 2) **in-source**; supply all FM services through employed resources
- 3) **blend of in-source and out-source**; supply some services through employed resources and procure the rest from a mix of more specialist suppliers

6.4 The **out-sourced** option is **discounted** immediately because it would not address the required direct contact with building users, customers and community engagement. The original business case for the TFM agreement would only achieve best value-for-money if the three Councils jointly awarded a contract for the total operational estate. Therefore, a TFM service for one Council would also not achieve best value-for-money.

6.5 The second option to **in-source** is **discounted** because the Council's FM Team does not currently have sufficient breadth and depth of FM expertise and the requisite capacity to organise, supply and manage all the FM Services the Council needs. There is also not the current accommodation space to occupy a significant operational structure. While some of the required hands-on expertise could transfer to the Council from the incumbent supplier, this would still not be sufficient. Equally it would, for the supply of some services, be uneconomic for the Council to employ what is often specialist expertise given the low frequency use and specialisms required.

6.6 The third option **blend of in-source and out-source** is **recommended** when compared with the second option. The FM Team could add sufficient breadth and depth of FM expertise to supply some services and manage the supply of the remainder through competitively tendered contracts awarded to a range of suppliers. This option would enable the FM Team to have a more direct influence on each supplier's performance to improve service quality and consistency, which would greatly reduce the risk of assets and services not being statutorily compliant.

6.7 The service supply proposed from the in-sourced FM Team are:

- 1) Reception and Front of House
- 2) Management & Helpdesk
- 3) Mailroom, reprographics, portorage, archival and stores management

6.8 Contracts for specific other services, such as catering, would be novated at this stage.

6.9 The service supply proposed through competitively tendered contracts are:

- 1) Hard Facilities Management services (Mechanical & Electrical services)
- 2) Soft Facilities Management services (Cleaning & Security)
- 3) Building Fabric services
- 4) Asbestos Surveys
- 5) Asbestos Removal/Management
- 6) Grounds Maintenance
- 7) Lifts (servicing, maintenance & repair)
- 8) Software (to support FM operations)

6.10 **Procurement Approach** - Options available to the Council to procure the FM services it could not supply with its own resources, are:

- 1) Public sector framework agreements
- 2) Council specific procurements

6.11 The first option has two distinct advantages over the second, given the prevailing context and circumstances, and they are:

- a) **time**; currently time is of the essence, the very nature of public sector framework agreements is that they have been awarded in compliance with UK Public Contracts Regulations and are therefore ready for public sector organisations to use
- b) **limited distraction**; the suppliers party to the public sector framework agreements have already demonstrated that they have sufficient experience and expertise to supply the relevant services, to qualify for inclusion on the relevant framework agreement

6.12 In other important respects, given the prevailing context and circumstances, utilising existing public sector framework agreements has numerous other beneficial characteristics including:

- a) **competition**; both options encourage competition amongst potential suppliers. However, the public sector framework route enables the FM Team to invite potential suppliers with proven experience and expertise, by virtue of their inclusion on a relevant public sector framework agreement, to compete by tender.
- b) **specification**; both the public sector framework and council specific procurement routes enable the FM Team to specify, without undue restriction, whatever is needed to satisfy demand

6.13 Public sector framework agreements are the product of a Public Contracts Regulations compliant procurement exercise generally carried out by a central purchasing organisation. Framework agreements provide agreed terms under which eligible purchasing organisations can award contracts for specific services.

6.14 The alternatives to public sector framework agreements, for the supply of the Facilities Management service bundles, are to:

- use in-house resources to supply all Facilities Management services
 - lack sufficient of the right type of expertise; difficult to acquire in time

- lack sufficient capacity, even after relevant transfers from the incumbent supplier and their subcontractors under the TUPE; difficult to acquire in time
- even if the Council could acquire sufficient expertise and capacity, the nature and low frequency of some services mean this would not achieve value-for-money
- replace the current Total Facilities Management (TFM) Project Agreement for all services with another TFM agreement through a full tender process
 - limited direct influence on supplier/subcontractor performance/results
 - high risk of repeating difficulties / frustrations / non-compliance experienced with the current TFM Project Agreement
- conduct separate direct to market procurement exercises for each service
 - lack of time; the current TFM Project Agreement took two years to complete
 - the Council has approximately six months
- use a mix of in-house resources and direct to market procurement exercises for each service
 - the services the Council needs to procure are those that it cannot supply with in-house resources, within the current time constraints and achieve value-for-money
 - some Facilities Management services will be supplied with in-house resources, such as reception, front-of-house and the help desk
- novate current incumbent supplier subcontracts to the Councils
 - the incumbent supplier has a one-month global termination clause for all subcontracts, and the nature and low frequency of some services mean novation would not achieve value-for-money
 - some subcontractors are not sufficiently capable, and the Council does not have confidence in their ability to achieve satisfactory outcomes
 - the Council intends, at the time of writing, to novate the contract with the incumbent supplier's catering subcontractor

6.15 **Framework Selection** - Consideration of which public sector framework agreements available to the Council were best suited to satisfy the Council's performance expectations. A review of relevant framework agreements resulted a shortlist of three:

- 1) Fusion 21 Limited
- 2) Crown Commercial Services (CCS)
- 3) NHS London Procurement Partnership

6.16 Top of the shortlist was Fusion 21 because it has a wide variety of ready to use framework agreements awarded in compliance with the UK's Public Contracts Regulations (2015). Each has multiple directly relevant specialist lots that cover all aspects of the FM services the Council needs.

- 6.17 CCS was second on the shortlist, it had soft and hard FM service framework agreements available but the suppliers party to these agreements were predominately large suppliers of Total Facilities Management solutions, of a similar type to the incumbent supplier. CCS confirmed that they were amending their framework offering to include smaller bundled services suppliers but these lots would not be available until autumn 2018 which is not within the required timeframe.
- 6.18 On this issue of TFM solutions the FM Team deployed its specialist FM expertise to gather market intelligence. A distillation of the intelligence gathered shows that previous high expectations for TFM solutions are proving significantly more challenging to achieve, for purchaser and supplier alike. The overriding trend is towards smaller and nimbler specialist suppliers with whom purchasers can influence directly and be more aware of risks and risk mitigation.
- 6.19 Third on the shortlist was NHS London Procurement Partnership, it had soft and hard FM service framework agreements available but the bundling of services would not, at least immediately, match the Council's needs owing to it being predominantly designed for use by NHS departments. To make the necessary amendments would require additional and unnecessary time and resource requirements on behalf of the Council.
- 6.20 **Contract Duration** - having concluded that framework agreements from Fusion 21 Ltd are the best match, the next aspect for consideration is the duration of each contract. The first point here was that contracts should not exceed the ultimate duration of the current TFM Project Agreement. This enables the budget previously agreed for the total ten-year duration of the TFM agreement to revert to new FM services contracts. It fixes the maximum duration to an approximate limit of five years, approximate because the FM Team propose to use a phased approach to 'take on' services from the incumbent supplier.
- 6.21 The relevant Fusion 21 framework agreements are in the table, along with the proposed initial contract durations. Most of the FM services required are covered by the 17 lots in the Compliance & Facilities Management framework agreement.

framework agreement	finish	yrs left	max. contract duration	proposed initial duration
Compliance & Facilities Management	02/04/2021	3.1	7.1	5
Lifts	14/07/2020	2.4	3.4	3
Ground Works	05/11/2018	0.7	4.7	3

7 CONSULTATION

- 7.1 LINK for Tri-borough Facilities Management has been consulted and as this is a LINK initiative they are fully supportive of the report.

8 EQUALITY IMPLICATIONS

- 8.1 A Human Resources work stream has been established as the recruitment and transfer of staff under TUPE will be a significant exercise. Full equality consideration of future roles will be taken. Individual impact assessments will be carried out as required at the appropriate stage.

9 INFORMATION, COMMUNICATIONS AND TECHNOLOGY (ICT) IMPLICATIONS

- 9.1 Future IT solutions are currently being assessed, this will require a Help Desk and Computer Aided Facilities Management (CAFM) service, specialist software packages for task management and hardware to support the revised FM team.

10 PROCUREMENT PROCESS

- 10.1 The Corporate Property Procurement Officer has been consulted and comments that they are fully engaged with the procurement process and support the paper.

11 PLANNING IMPLICATIONS

- 11.1 There are no such implications

12 LEGAL IMPLICATIONS

- 12.1 The Director of Law has been consulted and comments that the proposal to procure these services has arisen as the TFM agreement has failed to meet the expectations of the parties' and should be terminated by mutual agreement ahead of its contractual termination date of 30 September 2023.

- 12.2 RBKC now propose moving from a single contract for the supply of Facilities Management Services to the Triborough to a multi supplier model for the supply of Soft and Hard FM services by way of a Framework Agreement which will be provided to RBKC solely. Officers have undertaken the required due diligence and are to ensure that proposed call offs are awarded:

- within the limits of the framework agreement
- following the terms and conditions of the framework agreement
- through re-opening competition on the same terms
- if necessary by way of more precisely formulated terms, and other terms referred to in the contract documents in accordance with *regulations 33(7)(8)(9) and (11) of the PCR 2015 and clause 2.16 of RBKC's contract regulations*

- 12.3 Given the fact that there is to be a service provision change from the incumbent to a successor service provider, the incumbent service provider will need to comply with regulations 11 (duty to provide employee liability information) and 13 (duty to inform and consult with recognised trade unions or employee representatives regarding any affected employees).

- 12.4 The incoming service provider will also be under an obligation to comply with regulation 13 of TUPE in relation to informing any of its own employees that are likely to be affected by the proposed service provision change.

- 12.5 Officers are to provide legal services with copies of the OJEU notices (contract notice and award notice) in order for legal services to confirm compliance with regulation 33 of the PCR 2015.

Pamela Igbo, Senior Solicitor, Triborough Shared Services, Tel: 0207 641 4226

13 FINANCIAL AND RESOURCES IMPLICATIONS

- 13.1 Corporate Finance has been consulted. The proposed termination of the contract with Amey, will result in the Council initially incurring costs in mobilising new arrangements. These costs are expected to be recoverable from Amey. However, until this is confirmed there will be a need to draw down from the special project reserve of £0.275 million in 2017/18 and £0.818 million in 2018/19. The Leadership team is recommended to approve this elsewhere on this agenda.
- 13.2 Moving forward corporate finance expect to work closely with the service to develop and cost the chosen future delivery model and assist with any procurement process. As the projected future operating costs become clear any projected budget shortfall will be highlighted for resolution.

14 RISK MANAGEMENT

- 14.1 The FM Team would establish a series of work stream teams, as would the incumbent supplier to identify, record and mitigate the likelihood that risks would occur and the potential consequential impact. The managed risks to the successful implementation of this proposal coalesce around:
- **data**; the inadequate and timely transfer of data held in the incumbent supplier's software, on the Council's assets and services, and insufficient accuracy and completeness
 - **information**; poor quality and completeness of service descriptions required for the procurement
 - **timely transfer of services**; delays and lack of readiness to transfer services from the incumbent supplier to the FM Team and multiple external suppliers
 - **disagreements**; the inability of the three boroughs and the incumbent supplier to agree transition plans
 - **service provision**; the fall in quality of service provision during the period of transition (and relative uncertainty) from the incumbent supplier to the FM Team and multiple external suppliers
 - **competitive dynamics**; a lower than expected appetite amongst potential suppliers to compete to supply the Council with FM services

15 STAFFING

- 15.1 A Human Resources work stream has been established to ensure that all of our legal requirements relating to TUPE and Pensions are undertaken correctly

- 15.2 The council will TUPE back into RBKC those services listed in para 6.7
- 15.3 The council is not responsible for third party TUPE arrangements from one supplier to another
- 15.4 A full assessment of this matter on the LGPS scheme and any outstanding liabilities will have to be assessed.

16 SUSTAINABILITY

- 16.1 **Social sustainability;** Fusion 21 Limited specialise in setting up and awarding Public Contracts Regulations (2015) compliant framework agreements that relate to the built environment, they facilitate public sector organisations to make full use of, and benefit from, these frameworks. Each framework agreement complies with the Social Value Act (2012) and ensures each procurement through a framework also complies with the Social Value Act (2012).

17 COMMUNICATIONS

- 17.1 The Communications Team has been consulted and comments that they support the paper.

Richard Egan
Director of Corporate Property

Local Government Act 1972 (as amended) - Background papers used in the preparation of this report: NONE

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