



**Executive
20 August 2012**

**Report from the Director of
Regeneration and Major Projects**

Ward Affected: ALL

**Authority to award a contract for the provision of Facilities
Management Services in regard to the Council's Property Portfolio**

Appendix C to this report is not for publication

1.0 SUMMARY

- 1.1 This report relates to the provision of Facilities Management ("FM") Services to cover the council's entire property portfolio including the Civic Centre, the retained portfolio and the interim portfolio (those properties held for the period prior to the date of occupation to the Civic Centre)
- 1.2 This report also details the impact upon the council's existing employees delivering FM services and on contracted staff. It outlines the council's approach to TUPE and, in particular, specifies any voluntary redundancy proposals for the council's directly employed staff.
- 1.3 This report also sets out the principle of establishing a small client side FM Team to provide contract management and a retained in house FM expertise to ensure any contract is discharged satisfactorily.

2.0 RECOMMENDATIONS

- 2.1 That Members award a contract for Facilities Management Services to Europa Facilities Services Ltd to commence on 1st November 2012 and to expire on 30th June 2018 with provision for the council to extend the contract for two further one year periods.
- 2.2 That Members approve the approach outlined within this report for the treatment of existing council employees delivering FM services affected by this Contract.
- 2.3 That Members note officers' intention to establish an FM Client side team to provide effective contract management.

3.0 DETAIL/BACKGROUND

- 3.1 The council has for a number of years, embarked on a strategy to reduce the size of the operational portfolio whilst in parallel seeking to bring a physical reality to its One Council policy through consolidating services together in one main building. This has resulted in a series of disposals and termination of leases which has led to a more efficient use of space. It will culminate in July 2013 with the construction of the Civic Centre and the co-location of the vast majority of council Services.
- 3.2 Throughout this period the FM Service has re-shaped and adjusted to mirror the changes in the portfolio. This has seen a gradual reduction in staff numbers and changes in service delivery whilst maintaining standards and introducing improvements such as increased environmental awareness and financial efficiencies.
- 3.3 However, the advent of the Civic Centre will be the catalyst for significant change within the organisation and also to the way the FM Service will need to be delivered in the future. This building will provide services to approximately 2,500 staff and in excess of an anticipated 600,000 residents and visitors (excluding library users). It will be the council's show piece and therefore the FM Service will need to dramatically change to ensure it is capable of managing such a large complex and multi-functional space.
- 3.4 For example, the FM Service will be expected to provide both hard and soft FM services within the Civic Centre. It is anticipated the building will achieve a BREEAM 'outstanding' certification which will need to be maintained in use. It will provide catering facilities to staff and general public as well as to functions. It will effectively operate 24/7. Furthermore, the FM Service will now be expected to cover all council property both retained and interim estate (excluding residential premises), and subject to terms, be available to be drawn upon by partner organisations such as schools.
- 3.5 Thus the Civic Centre will require FM expertise beyond the current in-house offer and the FM service in the Civic Centre will be expected to be first point of contact for visitors and residents with a particular emphasis on customer care. Coupled with significant change in the retained portfolio, both in terms of the reduction in the number of main office buildings and the more corporate approach to FM, it was considered appropriate to test whether a total facilities management ("TFM") solution was the best way forward for the council. At the same time the council has been examining all support services to seek to identify efficiencies. Therefore the procurement of a TFM solution was also undertaken to examine best value.
- 3.6 Taking all of these factors into account it was judged this was the optimum time to embark upon a procurement exercise which, if successful, would introduce a TFM solution in time for the opening of the Civic Centre in 2013.

- 3.7 Assuming Members approve the recommendations contained within this report officers will need to act immediately to ensure the selected FM provider has sufficient time to mobilise in accordance with the Civic Centre timescale. The key dates and milestones to be achieved over the next twelve months are set out below:

1 st November	Proposed start date of FM Contract
October - December	Witnessing & Commissioning of Hard FM
21 st December	Practical Completion/Handover of Civic
January – March 2013	Installation of FFE
1 st April – 30 th June	Staff mobilisation, familiarisation. Building will be open to the public for Council Services and hire of facilities
1 st July	Full FM Service Delivery

4.0 PROCUREMENT PROCESS

- 4.1 Having regard to the need to have a settled solution in place to match the time scale toward the opening of the Civic Centre coupled with officer research into possible procurement routes, it was decided that the most straightforward procurement route was via a pre-existing framework agreement. This was also considered to be quicker and less costly in terms of officer time. Procurement officers recommended the Office for Government Commerce (OGC) Buying Solutions Facilities Management Services Framework RM708 (the “Framework”).
- 4.2 The contractors listed in the Framework have been assessed and pre-qualified by the OGC through a rigorous tendering and evaluation process. This provides a level of assurance that each contractor on the Framework can provide a TFM solution at a competitive level and in full compliance with relevant EU regulations. The full schedule of contractors is listed in Appendix A The Framework also requires the use of a standard contract, namely the NEC3 Term Service Contract.
- 4.3 Following confirmation from the Director of Legal and Procurement that participation in Facilities Management Services Framework RM708 was legally permissible, the council’s procurement unit published an invitation to all eight framework contractors to participate in a formal mini-competition process under the Framework. This invitation contained information pertinent to the contract to ensure the contractors were aware and capable of fulfilling any contract if selected. Simultaneously an evaluation panel was established comprising scoring members (AD Property and Asset Management, AD Civic Centre, Programme Manager Move to Civic Centre, Project Manager (P&AM) (subsequently withdrawn due to ill health) and extended technical support via Mott McDonald. In addition the panel drew on the expertise and advice of non-scoring officers namely, AD Customer Care, and officers from Procurement, Legal and Pensions. Finance Officers assisted with the scoring of financial submissions.
- 4.4 The Framework provides that evaluation is on the basis of the most economically advantageous bid, with high level evaluation criteria set by OGC, namely quality and price. These criteria were weighted by the council on a straight 50/50 split between quality and price. Within these high level criteria the council established sub-criteria which assisted both the contractors and the evaluation panel in

establishing the core issues in order to ensure a successful tender evaluation and award of contract. The establishment of sub-criteria was permitted by the Framework. The evaluation criteria and sub-criteria and scoring methodology are detailed in Appendix B.

- 4.5 The council provided contractors with a detailed further competition brief and FM specifications as well as an indicative budget. This made it clear that the council required an FM Service consisting of hard and soft FM services for the Civic Centre (and a limited number of other properties such as the future Willesden Green Library development) and a soft FM service in relation to other interim and retained council properties. Subsequent to the council providing the contractors with this further documentation, four of the contractors immediately withdrew from the mini-competition process. Upon querying their withdrawal, reasons ranged from an inability to properly resource the bid by the contractors through to a lack of interest due to the comparatively small value of the contract.
- 4.6 During the clarification period a further two contractors withdrew. The council had set strict criteria relating to pension protection for council staff which the contractors were unwilling to meet. As the council was unwilling to amend these terms the contractors withdrew.
- 4.7 The two remaining contractors detailed in Appendix C submitted detailed bids which were subject to rigorous examination by the council's evaluation panel. The contractors provided full method statements in response to the council's further competition brief and FM specifications. The contractors also submitted pricing schedules detailing costs for the principal term of the contract (excluding properties currently in a development phase) together with hourly rates for certain optional items. Contractors were also asked to provide details of efficiency savings over the contract term and details of profit share arrangements with regard to certain catering services. In addition there were a series of clarification meetings which culminated in a non-scoring presentation by both contractors when they provided an overview of their bids. These presentations were used by the evaluation panel to clarify information submitted in the bids.
- 4.8 Whilst neither bid was fully compliant with the council's instructions, both bids were considered to be strong and capable of fulfilling the proposed contract. However as shown in the scoring table at Appendix D, Bidder A scored more highly than Bidder B in relation to both quality criteria and price. It should also be mentioned that the pension proposals in relation to existing council employees put forward by Bidder B was outside the boundaries of the policy agreed by the General Purposes Committee.
- 4.9 Therefore this report recommends the award of contract to Bidder A, namely Europa Services FM Ltd as providing the most economically advantageous bid.

5.0 FINANCIAL IMPLICATIONS

- 5.1 The Council's Contract Standing Orders state that contracts for supplies and services exceeding £500k or works exceeding £1 million shall be referred to the Executive for approval of the award of the contract.

- 5.2 The estimated value of this contract for FM Services is shown in confidential Appendix D. This also details the current total cost of FM provision compared to the two evaluated bids.
- 5.3 In addition to the guaranteed costs for the interim and initial full year contract, the preferred contractor has also confirmed to work with the council to identify year on year efficiencies throughout the life of the contract. Consequently the council is able to establish a small client side FM team within the overall financial envelope. This client side FM team will be responsible for monitoring and checking the contract against pre-established performance indicators. The client side FM team will not undertake any direct FM duties as this will be the sole responsibility of the preferred contractor.
- 5.4 As the council will require the selected contractor to become responsible for the entire portfolio as from 1st November 2012, there will be additional costs arising from managing parallel portfolios. These costs have been anticipated and are included in the confidential Appendix D. As can be seen the proposed contract offers value for money and should, over the life of the contract, be financially positive for the council

6.0 STAFFING IMPLICATIONS

- 6.1 Officers identified all staff involved in providing FM duties either as part of the Property & Asset Management unit or by a small number of directly managed directorate premises. A total of 34 council employed staff were identified as potentially liable to transfer to a contractor pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE").
- 6.2 Council employed staff transferring to a contractor pursuant to TUPE would do so on their current terms and conditions of employment. Additionally, as part of the procurement process, the Council has sought to protect the pensions of council staff transferring to a contractor, requiring contractors to confirm they would either provide such staff with continued access to the Local Government Pension Scheme ("LGPS"), provide pension arrangements that are broadly comparable to the LGPS or in exceptional circumstances pay appropriate compensation to disadvantaged staff. Both contractors submitting tenders did so on the basis that they would apply for admitted body status thus allowing staff continued access to the LGPS.
- 6.3 A number of FM services such as cleaning and security are already provided by external contractors. Following analysis of the existing contracts a further 110 non council personnel were identified as also possibly being liable to transfer to a contractor pursuant to TUPE provisions.
- 6.4 Whilst the number of council staff directly affected by the proposed contract is relatively low, as part of the procurement process Officers have sought assurances from the contractors such that any staff currently employed by the Council that are liable to TUPE transfer to the selected contractor will be stationed within one of the buildings within the retained portfolio or the Civic Centre and not the buildings within the interim portfolio. The interim portfolio contains those buildings which in the

short to medium term the council has identified as being surplus to requirement.

- 6.5 The potential outsourcing has proved to be particularly contentious to the GMB and there have been protracted discussions to offer the GMB reassurances about the process relating to TUPE transfers. Essentially the GMB has sought clarity of how any potential contractor will manage FM arrangements for existing buildings as well as the new building without disadvantaging council staff. Potential contractors have confirmed that any new appointments to ensure dual running of buildings will be done on a temporary basis to ensure that opportunities remain for staff currently employed by the Council to work in the new Civic Centre when the interim buildings are closed.
- 6.6 Secondly the GMB has asked that the council considers offering the affected staff the opportunity to request voluntary redundancy prior to the transfer. This has been discussed with potential contractors who are happy to accept this approach.
- 6.7 A reduction in staff transferring will be reflected in the potential provider costings of the contract which is to the council's advantage but offering the opportunity for voluntary redundancy requests does bear a cost to the council.
- 6.8 Officers recommended that applications for voluntary redundancy are considered in stages, bearing in mind closure of the council's offices. This is to enable normal service provision during the transition period. This has been raised as a possibility with the GMB and is believed to be acceptable to the GMB. Officers also understand that some staff in FM are interested in exploring this option. Legal advice has been sought and this voluntary redundancy arrangement can be built into the contract. If the council decides not to offer a voluntary redundancy programme it is likely that trade unions relations will become strained and they will ballot for strike action amongst other things. It is therefore recommended that a voluntary redundancy programme is offered. Advice from the council's Head of HR has been sought on these matters.
- 6.9 Therefore the council intends to work with the selected contractor to ensure Brent staff have the best possible opportunity to determine their future.
- 6.10 The proposed FM client side team will be set up as soon as possible. However the council will need to appoint a Contract Manager immediately in order to assist in contract discussions with the preferred provider and to assist in setting up the small client side team.

7.0 LEGAL IMPLICATIONS

- 7.1 The estimated value of the FM Services contract over its lifetime is higher than the EU threshold for tendering of services contracts and is therefore governed by the Public Contracts Regulations 2006 (the "EU Regulations"). The FM Services contract is also governed by the council's own Contract Standing Orders in respect of High Value contracts and Financial Regulations.
- 7.2 The contract being recommended for award is being procured under a framework agreement set up by the Office of Government Commerce (now the Government Procurement Service). A contract of this value would otherwise have been subject

to the full tendering requirements of the EU Regulations. Use of a framework agreement that has itself been tendered in accordance with the EU Regulations means that contracts procured under the framework agreement do not need to be procured through a full EU tender process.

- 7.3 The council's Contract Standing Orders state that no formal tendering procedures apply where contracts are called off under framework agreement established by another contracting authority, where a call-off under the framework agreement is recommended by the relevant Chief Officer. However this is subject to the Director of Legal and Procurement confirming that participation in the framework is legally permissible. Use of the Framework was recommended by the relevant Chief Officer and as detailed at paragraph 4.3, the Director of Legal and Procurement did confirm that participation in the framework was legally permissible prior to commencing the procurement process.
- 7.4 As the contract proposed for award is a High Value Contract under Contract Standing Orders Executive approval is required for award.
- 7.5 As the procurement process is a mini-competition under a framework agreement tendered in accordance with the EU Regulations, the EU Regulations relating to the observation of a mandatory minimum 10 calendar day standstill period before the contract can be awarded, do not apply.
- 7.6 Legal Implications concerning staffing are included in Section 6, Staffing Implications.

8.0 DIVERSITY IMPLICATIONS

- 8.1 The proposed contract will impact on staff currently providing FM services and the way those FM services are provided. A full equalities impact assessment has therefore been undertaken and Members are referred to Appendix E for full details.
- 8.2 Our equalities analysis shows that there is no evidence of direct or indirect discrimination in this decision, The impact on Brent's staff diversity should however be considered even though the numbers are not significant and the impact small.

Set out below is a Preliminary Equality Analysis:

- 81% of affected staff define themselves as Black or Minority Ethnic, which is considerably higher than the council wide average of 61.6%. We are currently exceeding our council target of 53%. This means that 1.7% of Brent councils BME staff will be disadvantaged by this decision while only 0.5% of Brent's non-BME staff will be disadvantaged.
- 33% of affected staff are women which is considerably lower than the council wide average of 65.6%. We are currently exceeding our council target of 60%. This means that 2.5% of Brent's male staff will be affected by this decision and only 0.6% of Brent's female staff will be affected.

- The 34 members of staff affected have an average age of 45.9, slightly higher than the current average age across the Council of 44.17 (Council Target 42)
- Only one of the members of staff affected has declared a disability and data on other protected characteristics is low both for this group and across the council

8.3 Section 149 of the Equality Act 2010 provides that a public authority must, in the exercise of its functions, have due regard to the need to eliminate discrimination, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

8.4 Those functions include the functions as an employer. Decisions to as to how operations are managed, including a decision as to whether to outsource the arrangements for Facilities Management, are subject to the equalities duty. Consequently the completed Equality Analysis is attached as Appendix E for Member consideration. This analysis shows that older, male BME are most affected by this proposal. However, as stated in the EIA this adverse impact will be mitigated by the fact that TUPE protection will apply to all those staff who do transfer to the provider. In addition the equality legislation applies to all employers including those in the private sector and therefore staff so transferred will continue to be protected by this legislation.

8.5 Insofar as any adverse impact cannot be mitigated it is justified on the basis that the business needs of the Council cannot be met by the current arrangements which is based around provision of FM across a large number of buildings with a consequent structure which would require considerable change to ensure it was fit for purpose for the opening of the Civic Centre. As a result additional FM expertise and experience of managing a large complex building is required. Furthermore, an analysis of the financial bids has proven that an externalisation of this FM Service will deliver financial benefits to the Council

9.0 BACKGROUND PAPERS

Tender documents

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