

	Decision of Deputy Leader/Cabinet Member for Finance & Resources
	Report from the Corporate Director of Finance & Resources
	Lead Cabinet Member (Cllr Mili Patel)
AUTHORITY TO VARY CONTRACT FOR HARD FACILITIES MANAGEMENT (PLANNED AND REACTIVE MAINTENANCE)	

Wards Affected:	All
Key or Non-Key Decision:	Key
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Part Exempt – Appendices 1, 2 are exempt as they contain the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: “Information relating to the financial or business affairs of any particular person.
List of Appendices:	2 Appendix 1 – Variance (Exempt) Appendix 2 – Agreement (Exempt)
Background Papers:	None
Contact Officer(s): (Name, Title, Contact Details)	Name: Amita Rai Job Title: Senior Operation Officer – Capital Delivery Email: amita.rai@brent.gov.uk Name: Russell Burnaby Job Title: Head of Facilities Management Email: russell.burnaby@brent.gov.uk

1.0 Executive Summary

- 1.1 This report requests individual Cabinet Member approval to vary a contract in respect of the Council’s Hard Facilities Management/Planned and Reactive Maintenance with OCS UK& I Limited (Atalian Servest) in accordance with paragraph 13 of Part 3 of the Constitution. The report summarises the reasons for the request to vary.

2.0 Recommendation(s)

That the Deputy Leader / Cabinet Member for Finance and Resources, having consulted with the Leader:

- 2.1 Approves the variation of the contract for Hard Facilities Management/Planned and Reactive Maintenance with OCS UK& I Limited as set out in paragraphs 3.2.1 and 3.2.2.

3.0 Detail

3.1 Contribution to Borough Plan Priorities & Strategic Context

- (a) The uplift has been proposed on the basis of a verification of building assets exercise completed by the Contractor across the Council's operational 'in scope' building estate, a change in the scope of works and a rebase-lining of costs. The uplift in costs is set out within the document appendix 1 '20240321 Brent Y3 Variance March Onwards v4' (exempt) and appendix 2 'London Borough of Brent Compensation Event BR012 Rev B' (exempt) and Contractor Plan.
- (b) The Council's existing planned and reactive maintenance contract contribute to the following priority areas set out in the Borough plan 2023-27:
- A Cleaner, Greener Future – through the ongoing maintenance of the Council's assets to ensure they continue to work efficiently.
 - Thriving Communities – Many of the assets covered by the Council's existing planned and reactive maintenance contract are accessible to the community including the Civic Centre, the libraries, Family Wellbeing Centres and Adult day care facilities.

A link to the Council's wider strategies, priorities and plans can be found below:

<https://www.brent.gov.uk/the-council-and-democracy/strategies-priorities-and-policies>

3.2 Background

3.2.1 The Council entered into a contract for Facilities Management with Atalian Servest AMK Ltd (now OCS UK&I Limited) ('the Contractor') commencing on 1st July 2021 (the 'Contract') based on the NEC4 Term Service contract terms and conditions. The contract was awarded in July 2021 for 5 years with an option to extend for two-year extension (5 + 2).

3.2.2 Officers consider that the contract should be varied and have entered into discussions with the Contractor to vary the Contract as follows:

- The revised costs as detailed within appendix 1 '20240321 Brent Y3 Variance March Onwards v4' (exempt) and appendix 2 'London Borough of Brent Compensation Event BR012 Rev B' (exempt).
- The current contract cost is £1,204,751.28 + VAT. Factoring in the uplifted values following the asset verification exercise the contract value uplift is £324,124.20 + VAT per year (£27,010.35 + VAT per month) and a full breakdown is detailed within appendix 1 '20240321 Brent Y3 Variance March Onwards v4' (exempt).

- 3.2.3 The Contract specification provided for the Contractor to undertake a verification of the Council's building assets portfolio detailed in condition surveys provided by the Council to the Contractor prior to contract commencement. The Contractor conducted and completed the verification, taking into account additional property assets that have been added to the portfolio since July 2021 and those not accounted for in terms of the condition survey data provided by the Council in advance of the contract.
- 3.2.4 Officers recommend acceptance of the asset validation as it will be cost effective to utilise the existing maintenance contract where there is already a maintenance team to undertake any additional activity that may be required in respect of the additional properties, rather than alternative maintenance arrangements for those assets and building components. In addition, should the Council not maintain the additional assets the assets will fall into disrepair and possibly breach of/non-compliance with statutory requirements where maintenance of the asset is required under the law.
- 3.2.5 It has also been noted that the Contractor has failed to deliver their social value commitment in relation to the contract for over the initial two years of the contract and the parties have agreed that refund of the social value element of the contract sum should be made by the Contractor to the Council. The sum to be refunded has been calculated and deducted from the proposed uplift in contract sum. Please see Appendix 120240321 Brent Y3 Variance March Onwards v4' (exempt) for the social value refund element and Appendix 20240321 Brent Y3 Variance March Onwards v4' (exempt) detailing the variance is £324,124.20 + VAT per year (£27,010.35 + VAT per month) and a full breakdown is detailed within appendix 1 '20240321 Brent Y3 Variance March Onwards v4' (exempt) in respect of the uplift in contract sum.
- 3.2.6 This completion and sign off of this exercise will place the contract arrangement in a stronger position to serve the council going forwards as all the assets across the councils existing FM managed estate will benefit from a comprehensive maintenance approach, reducing breakdowns and asset failure.
- 3.2.7 The Contract allows the Council to give the Contractor instruction changing the Scope/Specification, a Task or the properties in the portfolio and the change can be treated as a compensation event which will require payment of additional sum to the Contractor for any additional work/services in respect of the change. The terms and conditions of the contract will not change but the value of the proposed variation with the inflationary uplift and the optional 2 year extension (if exercised by the Council) will be over the threshold for authorisation by Corporate Directors and Directors.
- 3.3 Under section 3(b) of the table at paragraph 9.5 (and 9.7) of Part 3 of the Constitution, Corporate Directors and Directors may only vary contracts and agreements provided that:
- (a) the variation would not be in breach of Procurement Legislation.

- (b) the variation does not substantially alter the terms and conditions of the contract
- (c) there is sufficient existing budgetary provision.
- (d) provided that in the case of any variation (other than an extension):
 - (i) the total value of the variation is less than £1m; and
 - (ii) if the total value of the variation (and any previous variations agreed under this provision) is more than £50k it is not more than 50% of the original contract value (calculated over the life of the contract including any extensions or possible extensions and adjusted in accordance with any price review mechanism provided for in the contract).
- (e) the relevant cabinet member shall be consulted prior to a decision within (d) (a) and (ii) above and may request that the decision instead be referred to them.

3.4 For the reasons detailed in paragraphs 3.2.7 the Director does not have delegated powers to agree the variation but pursuant to paragraph 13 of Part 3 of the Constitution, the Deputy Leader/Cabinet Member for Finance and Resources, having consulted with the Leader has delegated powers to:

3.4.1 Agree contract variation where the decision is excluded from officer delegated powers because:

- (a) in the case of any variation (other than an extension):
 - (i) the total value of the variation is £1 million or more; and
 - (ii) the total value of the variation is more than £50k and is more than 50% of the original contract value (calculated over the life of the contract including any extensions or possible extensions and adjusted in accordance with any price review mechanism provided for in the contract)

3.4.2 Agree of other contract variations where the Cabinet Member requests that a decision be referred to them pursuant to Part 3 paragraph 9.5.

3.5 Subject to consultation with the Leader, the Deputy Leader/ Cabinet Member for Finance & Resources, has delegated powers to agree the proposed variation.

4.0 Stakeholder and ward member consultation and engagement

4.1 Ongoing internal consultation has been undertaken throughout the process from the initial delegated authority to award of contract.

5.0 Financial Considerations

- 5.1 The value of the existing contract is £1,204,751.28 per annum. The value of the contract with the proposed variation is £1,528,875.43 per annum.
- 5.2 The revised costs detailed within appendix 1 '20240321 Brent Y3 Variance March Onwards v4' (exempt) and appendix 2 'London Borough of Brent Compensation Event BR012 Rev B' (exempt) approves the compensation event to allow the revised contract costs to be implemented from March 2024 onwards.
- 5.3 The information summarised on the 'Year 3 Cost Uplift, tab within appendix 1 shows the calculation for the new contract value following asset validation. The current contract cost is £1,204,751.28 + VAT (£100,394.94 x 12 months) and the budgeted amount is £1,290,900.02. There is no underspend on B08029 to fund the increased costs. Factoring in the uplifted values following the asset verification exercise the contract value uplift is £324,124.20 + VAT per year (£27,010.35 + VAT per month) and a full breakdown is detailed within appendix 1 '20240321 Brent Y3 Variance March Onwards v4' (exempt).
- 5.4 The cost of this variation of the Contract will be funded from existing central revenue budgets.

6.0 Legal Considerations

- 6.1 Officers recommend the variation of the Contract as set out within this report.
- 6.2 The value of the original contract is such that it is subject to application of the Public Contract Regulation 2015 (PCR 2015).
- 6.3 The contract contains express provision allowing for the variation as recommended and as such variation is permitted in accordance with the PCR 2015.
- 6.4 As set out in paragraph 3.2.7, pursuant to paragraph 13 of Part 3 of the Constitution, the Deputy Leader/ Cabinet Member for Finance & Resources, subject to consultation with the Leader, has delegated powers to agree the proposed variation.

7.0 Equality, Diversity & Inclusion (EDI) Considerations

- 7.1 Pursuant to s149 Equality Act 2010 (the "Public Sector Equality Duty"), the Council must, in the exercise of its functions, have due regard to the need to:
- (a) eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it,

- 7.2 The Public Sector Equality Duty covers the following nine protected characteristics: age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.3 Having due regard involves the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic and the need to consider taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes removing or minimising disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.
- 7.4 There is no prescribed manner in which the council must exercise its public sector equality duty but having an adequate evidence base for its decision is necessary.
- 7.5 The proposals in this report have been subject to screening and officers believe that there are no adverse equality implications.

8.0 Climate Change and Environmental Considerations

- 8.1 The maintenance contract uplift incorporates requirements for adhering to sustainable building standards, such as BREEAM (Building Research Establishment Environmental Assessment Method) accreditation. By ensuring building maintenance activities comply with strict sustainability guidelines, which encourage environmentally conscious practices and help create a built environment that is healthier and more resource efficient. Examples of these upgrades include installing and maintaining LED lighting, modernising heating, and ventilation systems, and improving insulation.

9.0 Human Resources/Property Considerations (if appropriate)

- 9.1 This service is currently provided by an external contractor and there are no implications for Council staff arising from varying the contract.

10.0 Communication Considerations

- 10.1 There are no implications for Council staff arising from varying the contract.

Relevant Documents:

Cabinet Decision of 19th March 2021 – Authority to Award contract for the Provision of Hard Facilities Management Services

Report sign off:

Minesh Patel
Corporate Director of Finance & Resources