

MUNICIPAL YEAR 2008/2009 REPORT NO. 156

MEETING TITLE AND DATE:

Cabinet
17 December 2008

REPORT OF:

Director of Education, Children's Services and Leisure (ECSL)

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Agenda – Part: 1	Item: 8
Subject: Enfield Cleaning Services Joint Venture	
Wards: All	
Cabinet Member consulted: Cllr Glynis Vince	

1. EXECUTIVE SUMMARY

The purpose of this report is to implement the recommendation in the March 2008 Cabinet report, which approved the transfer of the cleaning service to ECSL. Members agreed that the Director of Education, Children's Services and Leisure (ECSL) in consultation with schools develop and implement arrangements for the future provision of cleaning in schools, and for future responsibility for civic cleaning to be reviewed, when the new arrangements for school cleaning have been established.

The Director of ECSL has carried out further work and begun negotiations with a potential joint venture (JV) partner to assess the feasibility of delivering Enfield's cleaning service through a public joint venture partnership (PJVP). This report concludes that there are benefits to be gained by providing Enfield's cleaning service through a PJVP with the potential JV company.

2. RECOMMENDATIONS

Cabinet is asked to:

1. Approve that the Council continue its negotiations with the potential JV company.
2. Agree that the Director of ECSL and the Director of Finance and Corporate Resources make the necessary arrangements to deliver future building cleaning services through a PJVP with the potential JV company, as discussed in the report.
3. Agree that subject to the proposed PJVP being agreed, all Council Building Cleaning contracts are novated to the PJVP company for a ten-year term with a five-year break clause.
4. Agree that the Chief Executive in consultation with the Leader of the Council be authorised to nominate two directors, one an officer and the other a councillor, to the Board of the PJVP company.

3. BACKGROUND

- 3.1 The cleaning service provides building cleaning services on a traded basis to 46 local schools with a turnover of £2.4m (07/08) and also for civic, Arms Length Management Organisation – Enfield Homes (ALMO), and other buildings with a turnover of £1.1m (07/08). Appendix 1 gives details of the staffing levels. The number of schools purchasing the service has reduced over time with some schools using private sector providers. If this trend continues, the sustainability of the service becomes questionable.
- 3.2 Following an independent review, Cabinet agreed to transfer the cleaning service to Education Children's Services and Leisure (ECSL) on 1 April 2008, from Environment Street Scene and Parks (ESSP). The transfer released annual savings of £283k, mainly from central management costs. The transfer was successfully implemented in April 2008.
- 3.3 The purpose of this report is to implement the recommendation that was contained in the Cabinet report that approved the transfer. Members agreed that the Director of ECSL, in consultation with schools, develop and implement arrangements for the future provision of cleaning in schools, and for future responsibility for civic cleaning to be reviewed when the new arrangements for school cleaning have been established. Notice was previously given to schools that the provision of building cleaning services is subject to a review.
- 3.4 Work has been carried out to identify and evaluate the options available for the future delivery of building cleaning service in Enfield. The options considered are discussed in paragraph 4 below, in addition to the option of delivery through a PJVP
- 3.5 **Future delivery of cleaning service through a PJVP**

In a JV the parties involved set up a partnership arrangement for a specific purpose or for delivering service/s. The terms of reference, purposes, conditions, arrangements, share of profits/losses etc are included in a formal partnership agreement that all parties are signatory to. A special vehicle joint venture company could be formed to deliver the joint venture. This would offer limited liability status to the partners. The partners would have an equity stake in the company. The level of the equity stake could vary between the partners.

Under this option, the authority's cleaning service will transfer to a public joint venture partnership through a special vehicle joint venture company that is owned by a local authority. Preliminary discussions have taken place with a potential JV company that is fully owned by a county council.

The main terms and conditions of the proposed PJVP are-

- The council will transfer its building cleaning service to the special vehicle joint venture company – the JV Company.
- The PJVP will be agreed for a ten-year term with a five-year break clause.

- Enfield council will own 40% of the equity in the PJVP company and the potential joint venture partner company will own the remaining 60%.
- The current SLAs with schools will be novated to the PJVP company, subject to schools agreeing. The SLAs will be for 3 years and are extendable.
- The existing council building cleaning SLAs will be novated to the PJVP company for a ten-year term with a five-year review.
- The council will nominate an officer and a councillor to serve as directors on the JV company management board of 5 directors.
- All staff will transfer under Transfer of Undertaking (Protection of Employment) Regulations 2008 (TUPE) to the JV company there will be no redundancies.
- The council will share 50% of the profit that could be reinvested in the service or other arrangements could be agreed.
- The council in the first three years of the partnership will be guaranteed a total of £500k that will be paid in advance as a rebate in each year.
- The JV company will set up a Cleaning Operations Liaison Board (reporting to Board of Directors), which would include representatives of client and operational managers.
- All past and future pension liabilities (FRS 17) for staff transferred to the PJVP company under TUPE, will pass through to the council.

The main advantages of the proposed PJVP are –

- Under TUPE arrangements, staff would be offered equal or better terms of conditions and all direct operatives and staff would transfer.
- Benefits from the marriage of potential joint venture partner company and Enfield's public sector ethos and expertise. The potential JV company's core business is cleaning service and they have a good track record of delivering cleaning services through public partnerships.
- Relatively quicker to implement than a normal procurement route via competitive tendering.
- All risks for the future delivery of the service are transferred to the JV company.
- The JV company will have better access to external financial resources (capital and revenue) to invest in the service.
- The council can influence policy, strategy and operational decisions of the JV company.
- A ten-year partnership with a five-year break clause will not only enable the JV company to develop and improve the services but also to expand the business through proper investment.

The main disadvantages of the proposed PJVP are –

- The risk of a challenge to the exemption from public services procurement regulations (OJEU).
- Client commitment would be required for at least 3 years.

- All past and future pension liabilities of transferred staff will need to be met by the council.
- Central overheads and recharges that were apportioned to the service would need to be reduced or where this is not possible be absorbed in other council budgets.

The JV company has shared IT, Finance, Legal and other corporate support services, a management charge will be levied for using this service. As this service is a shared service, it is reasonable to expect economies of scale.

The TUPE transfer is expected to be less complicated and the process much quicker. The potential joint venture partner company has confirmed that subject to the present client base remaining largely intact there will be no redundancies. However if the client base were to reduce significantly then that there would be a risk of staff redundancies. They have also indicated that they would need as a minimum a three-year commitment from schools. It is expected that the JV could be implemented by April 2009.

The Council and the potential JV company have signed a confidentiality agreement for exchanging detailed costing and pricing information.

The potential JV company has indicated that they would expect the council to meet all past and future FRS17 (pension deficit) liabilities for staff transferred under TUPE. This is a highly complex area on which the Pensions Fund Board have been asked to consider admitting the JV company to LGPS, under a closed Transferee Admitted Body status; The pension issues are discussed in the financial implications section in paragraph 6.

The council is currently negotiating a single status agreement with staff and Unions. The single status liability for backdated awards will remain with the council and therefore the incoming contractors or partners will need to be indemnified. The incoming contractor would pay staff in line with the revised single status pay rates.

3.6 PJVP consultation with key stakeholders and market research

Management have consulted cleaning service staff on the proposals and this would continue. The Unions (GMB and UNISON) have also been consulted early in the process, at four separate meetings. Presentations were made at the secondary schools and Primary schools Head teachers conferences and are also planned for the special schools sector. Fact sheets will also be distributed to schools and a Help-desk for dealing with queries from staff and schools will also be maintained during the transition process.

An on-line survey with a covering letter from the Director of ECSL was sent to all schools, which have an SLA with the authority and also to those that provide their own in-house service (65 schools in total), to assess their initial preference and comments on the cleaning service options. Schools that have outsourced their cleaning service were not consulted as they are tied to contractual commitments. The survey deadline closed on 14 June 2008.

21 (32%) schools completed the survey, 15 primary schools, 2 special schools and 4 secondary schools. It may not be appropriate to use the results as representative but some general conclusions can be drawn. They are-

- The majority of primary schools that have an SLA with the authority prefer a JV model and their next preference is the managed service option. They do not prefer taking the service in-house.
- The majority of primary schools that have an in-house service prefer remaining in-house. Their next preference is the JV proposal followed by the managed service.
- The majority of secondary schools that have an in-house service prefer to remain as they are. Their next preference by a small margin is the JV option.

A cross-section of local authorities was contacted to assess how cleaning services are provided and their experience. They were chosen from the following categories-

- Where they do not provide a schools cleaning service.
- Where a managed service is provided to schools
- Where the cleaning service have been completely externalised.

Most authorities have ceased from providing an in-house cleaning service to providing a central cleaning management service, which manages their externalised cleaning contracts through a service level agreement (SLA). This seems to be the continuing trend. Authorities have released savings, however, there are concerns on the loss of some influence and the risk of contractors not performing to the specification/quality standards. This model requires strong in-house contract management skills, procurement expertise and an effective client-side function.

None of the authorities have entered into a JV partnership for cleaning services; this is a more recent innovative approach.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 The four alternative options that have been considered are –

1. That the authority ceases the provision of a building cleaning service to schools and schools make their own arrangements.
2. That the authority provides a cleaning management service to schools under a SLA and transfers all cleaning operatives to schools.
3. Outsource the cleaning service through competitive tendering.
4. Management buy out or management buy in.

4.2 Option 1- Council ceases to provide a schools cleaning service

Currently 51% of schools buy the service from the authority through a SLA that expires in April 2009. There is no compulsion for the authority to provide a cleaning service to schools. 27% of schools use external contractors and the remaining 22% provide their own in house service.

Under this option, the authority will cease to provide the cleaning service to schools. The current cleaning operatives will transfer to schools. TUPE does not apply, as the

transfer is in-house, excluding voluntary aided and foundation schools. The transfer can be affected quickly as the changeover process is the least complex of all the options. This option could be implemented by February 2009.

Schools will have the freedom to decide how the service should be configured and delivered i.e. provide the service in-house or externalise it (bearing in mind TUPE). The cost of the service will be met from their delegated budgets.

Schools will have their own management arrangements; therefore, staff redundancies will arise in the central management and admin team (subject to TUPE). Currently these costs are recovered from the charges made to schools.

The majority of the central costs currently included within the charges to schools for cleaning, would have to be re-apportioned across other council services to the extent that they are fixed and cannot be reduced. This is likely to have an impact on other council budgets.

Nearly two thirds of the cleaning service is dedicated to schools and the remaining third to civic and other council buildings. This option would leave the non-schools building cleaning with the council. It would not be cost effective or practical to continue providing the service in its current format, as the service would need to absorb central management costs that cannot be reduced, which is currently recovered from school income. It could also bear a larger proportion of central recharges. The two options for continuing to deliver the non- schools cleaning are-

1. Transfer the service back to the client departments.
2. Outsource the service through a competitive tendering process.

The option to transfer the service back to client departments is not cost effective as the service departments will incur additional management, training and set up costs and have limited skills and contract management expertise.

The option to outsource the service would incur OJEU tender preparation costs and staffing resources. It may take between 9 to 15 months to complete the tendering process There is limited client side expertise in the departments to monitor and manage the contracts.

The change could cause some disruption and affect staff morale and motivation adversely. This could have an adverse impact on the bottom line.

4.3 Option 2 – Council provides a cleaning management service

Under this option the authority will provide strategic, operational and quality management support to schools through an agreed SLA. All schools cleaning operatives will be transferred to schools, however TUPE will not apply as the transfer is in-house excluding voluntary aided and foundation schools. For this option to be viable, schools will need to give long term commitment to the arrangement, there is no certainty that this would happen.

There are unlikely to be any significant redundancies, as the cost of the current management and admin function will be recovered from the charges to schools and

non- school clients. Schools will meet the cost of managed service and the cleaning operatives from their delegated budget.

The majority of the central costs currently included within the charges made to schools for cleaning, would have to be reapportioned across council services to the extent that they are fixed and cannot be reduced, this is likely to have an impact on other council budgets.

The cleaning service to civic and other building clients will continue under the same management in ECSL. The non-schools cleaning operatives will remain under the responsibility of ECSL. This may not be cost effective as some of the fixed costs may not be reducible in line with the service delivery changes.

4.4 Option 3 - Outsource the cleaning service through competitive tendering

The option to outsource the cleaning service through competitive tendering would require an OJEU (Official Journal of the European Union) notice and Public Contracts Regulations 2006 compliant procurement process. This could be expensive and is a very lengthy process because of the volume of documentation and complex tendering processes e.g. preparing TUPE information, advertising in the European Journal etc. It is expected that it would require one project manager and a part time admin officer) full time for 12 to 15 months to complete the process.

The delay caused by the procurement process could also result in schools deciding to outsource the cleaning service to external contractors independently. A secondary school has recently given notice that they are considering terminating the SLA with the council to award it to an external contractor. It should be noted that if this haemorrhage continues unabated, the service could become less profitable and its long-term sustainability will be put at risk. Because of these issues and the fact that the JV option offers a quicker solution, the option to outsource the cleaning service has not been considered. Furthermore there is no certainty as to whether the outcome of the tendering process would give better value for money.

4.5 Option 4 - Management buy out or management buy in.

There is no in-house capacity, skills or financial resources to consider a management buy out or buy in.

5. REASONS FOR RECOMMENDATIONS

The recommended PJVP for the future delivery of cleaning services offers many benefits, which are discussed in the report. The transfer can be implemented smoothly and quickly. It offers better job security to all cleaning operatives, as they will transfer under TUPE. The proposed joint venture partner is an experienced cleaning service provider that is owned by a local authority.

6. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE RESOURCES AND OTHER DEPARTMENTS

6.1 Financial Implications

As detailed in Part 2 Report.

6.2 Risk Management Implications

There is a risk that the council can be legally challenged for claiming exemption from OJEU tendering regulations. The council has obtained Counsel Opinion on the exemption from OJEU tendering requirement (Teckal case) and in the light of the judgement recently passed on RMP vs Brent Council, Counsel is of the opinion that under the proposed structure and agreement, the council would be exempted from the OJEU tendering requirement. Details of all the key risks and their management are shown in Appendix 2.

6.3 Legal Implications

As detailed in Part 2 Report.

6.4 Property Implications

It is expected that the staff will continue to occupy Marsh House for the foreseeable future although the potential joint venture partner company are looking for better quality accommodation within the borough. Any such move would take at least six months to achieve but would also burden the JV with higher accommodations costs.

7. PERFORMANCE MANAGEMENT IMPLICATIONS

The proposed JV can deliver opportunities for real service improvements as the JV company's core business is cleaning service and it also has accredited quality management systems.

8. COMMUNITY IMPLICATIONS

Positive Impact

The proposal to provide Enfield's cleaning service through a PJVP with the potential joint venture partner company will ensure the continuation of a value-for-money quality cleaning service for schools and other civic buildings.

9. PUTTING ENFIELD FIRST

The proposed JV would enable better joined up working and integrating processes to improve customer care and further service improvements

Background Papers

Report No.238 – 5 March 2008 Cabinet - Cleaning, Passenger Transport and Catering Services.

Appendix 1

INFORMATION ON CURRENT CLEANING SERVICE

- 4.1 The actual headcount and full time equivalent (FTE) of staff currently employed within each of the sectors is detailed in Table A below: -

Table A - The staff currently employed within each of the sectors

Service	Headcount	FTE		Headcount	FTE
Non schools			Schools		
Civic Buildings	64	18.2	Primary Schools	142	48
Education Non Schools	17	4.8	Secondary Schools	122	48
Housing Group	8	2	Special Schools	10	3
Libraries	9	2.8	Total Schools	265	95
Social Services Group	28	8.8			
Mobile Team	5	4.9			
Total Non Schools	131	41.5	Total all	396	136.5

- 4.2 In addition to the above there are 8.5 FTEs involved in the management and administration of the cleaning service
- 4.3 The current providers of schools cleaning service are shown in Table B below.

Table B – Current providers of schools building cleaning services

	Primary	Secondary	Special	Total	%
ECSL -SLA	36	7	3	46	51
Schools In-house	13	5	2	20	22
Externalised	17	6	1	24	27
Total				90	100

Appendix 2

Risk Assessment - Enfield Cleaning Services Joint Venture Proposal

RISK	LIKELIHOOD*	IMPACT*	RISK RATING	ACTION / RESPONSE TO MANAGE RISK	OWNER
LEGAL/FINANCIAL RISKS					
Teckal Non-Compliance legal challenge	2	4	8	Ongoing legal advice and assessment	JV company board (JVCB)
Adverse profitability and financial stability of JV company	2	2	4	Effective financial reporting and control with clear efficiency and profit targets- Business Plan	JVCB and JV management team(JVMT)
Failure to meet closing of accounts deadlines - consolidation of accounts	2	2	4	Integrated closing timetable and feasible year end dates.	JV company and LBE finance teams.
IFRS 17 - no pass through of pension liability	4	5	20	Further negotiation and discussions needed to arrive at an acceptable arrangement. NCS has indicated that if the pass through is not agreed, they would walk away from the deal.	JVCB and LBE.
Adverse impact on LBE corporate contracts	3	2	6	Give proper notice on contract terminations and assess impact.	JVCB and JV management team(JVMT)
Failure of JV Partnership	2	4	8	Effective JV management board and liaison board. Communication and financial management strategy. Clear and transparent JV Agreement.	JVCB and JV mobilisation team (JVMT)
Increases in charges above RPI	2	3	6	Contract conditions and pricing in JV Agreement. Open book accounting process.	JV Liaison Board (JVLB) and JVCB
Loss of clients in JV company	2	4	8	Effective marketing, business planning and good customer services.	JVCB and JVMT
OPERATIONAL/MANAGEMENT RISKS					
Office Accommodation	3	3	9	Accommodation strategy and plan	JVMT
Incompatibility and migration issues on IT Systems	2	3	6	JV mobilisation plan - IT feasibility	JVMT

Poor Quality Management	2	4	8	Achieve ISO 9001 for JV company and continuous improvement to quality management processes and systems.	JVCB and JV mobilisation team (JVMT)
HUMAN RESOURCES RISKS					
Staff Transfer & Retention	2	4	8	HR Strategy and policies	JVCB and JV mobilisation team (JVMT)
Cleaning Staff Redundancies	2	3	6	Unlikely unless significant reduction in clients - effective customer services and quality systems.	JV company management team
Single Status Liability	2	1	2	LBE to meet liability	LBE
Industrial Relations/Unions	2	3	6	Communication and consultation strategy.	JVCB and JV mobilisation team (JVMT)
STRATEGIC RISKS					
Deterioration of JV partners relationship in the long term	2	4	8	JVCB. Clear and transparent JV agreement.	JVCB and JVMT
Loss of LBE influence	2	4	8	LBE nominated directors input and influence	JVCB
Political changes - adverse impact on JV	2	4	8	LBE nominated directors input and influence	JVCB
Adverse reputation arising from JV company actions	1	3	3	JVCB and JV Agreement	JVCB

***Key**

LIKELIHOOD	IMPACT
1 = Remote	1 = Insignificant
2 = Unlikely	2 = Minor
3 = Possible	3 = Moderate
4 = Probable	4 = Major
5 = Highly Probable	5 = Catastrophic

Risk rating score = likelihood * Impact