

MUNICIPAL YEAR 2019/2020 REPORT NO. 100

MEETING TITLE AND DATE:
Cabinet: 16 October 2019

REPORT OF:
Executive Director – Place

Agenda – Part: 1

Item: 7

**The Future Delivery of Cleaning Services –
Council Corporate Buildings**

KD 4942

Cabinet Member consulted: Cllr. Maguire

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1. EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to seek approval of a further extension of the current Corporate Buildings Cleaning Contract for a period of three months to allow consultation with affected staff and union representatives on the insourcing of Cleaning Services into the Council and subject to that consultation to effect the insourcing of Cleaning Services and the transfer of staff under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).
- 1.2 The Cleaning Service for Enfield Council's corporate buildings has been provided under a contract with a Joint Venture between the Council and Norse (the trading arm of Norfolk County Council) known as Enfield Norse, for the last 10 years. Following a nine-month extension period agreed earlier this year, the current contract is due to expire on 31 December 2019. 80 Corporate Properties are currently covered by the contract.
- 1.3 Following approval by Cabinet in June 2019 of the Strategic Asset Management Plan officers are undertaking an Operational Property Review. The intention is for the Council to operate from fewer, better located buildings that better meet the current and future needs of customers and staff and that are more cost effective to run. This will over time reduce the number of properties requiring cleaning services.
- 1.4 The report sets out details of the options for the future delivery of Cleaning Services that have been considered.

2. RECOMMENDATIONS

That Cabinet:-

- 2.1 Delegates authority to the Director of Property & Economy, in consultation with the Director of Resources to agree the extension of the current Cleaning Services contract with Enfield Norse for a period of 3 months from 31st December 2019.
- 2.2 Approves, subject to satisfactory completion of consultation with affected Staff and Union representatives, the insourcing of Cleaning Services for Corporate Buildings with effect from 1st April 2020 and the associated transfer of cleaning staff into council employment under the Transfer of Undertakings (Employment Protection) Regulations 2006 (TUPE) and delegates authority to the Director of Property & Economy, in consultation with the Director of Human Resources, to undertake such actions as may be necessary to implement this decision.

3. BACKGROUND

Council cleaning services were outsourced to a joint venture between Enfield Council and Norse Group (the trading arm of Norfolk County Council) known as Enfield Norse, with effect from 01 April 2009, with Council employed cleaning operatives transferring to Enfield Norse under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

Enfield Norse is a Public Joint Venture Partnership (PJVP). Enfield Council owns 40% of the equity in the PJVP and Norse owns 60%. Any profits are split 50:50, after Norse has deducted their administrative costs.

The original contract expired earlier this year and an extension to 31 December 2019 was agreed in June 2019 to enable an options appraisal to be undertaken. Prior to this a proposal to outsource a wider range of FM services including cleaning had been considered but was not pursued.

Under the current contract cleaning staff employed by Enfield Norse are paid a minimum of the London Living Wage. They do not however enjoy other benefits available to Council employed staff, including the Local Government Pension Scheme.

Currently, there are 80 Corporate Council buildings that receive Cleaning Services under the contract.

Following approval of the Strategic Asset Management Plan in June 2019 the Council has commenced a review of Operation Properties

with the aim of operating from fewer; better located buildings that better meet the current and future needs of staff and are more cost effective to operate. This process would see a reduction in the number of buildings requiring cleaning services and the assessment of future options for delivering services has taken that into account.

Enfield Norse also provides cleaning services to 15 Council managed schools and 16 Academies. These services are provided under separate contracts. The existing school contracts will continue to be delivered by Enfield Norse pending a separate decision on the future of the Joint Venture. Most of the contracts with Academies will be novated from Enfield Norse to the parent company Norse to comply with Teckal regulations which require no more than 20% of business undertaken by the company to be outside of the public sector.

4. OPTIONS CONSIDERED

Four options to deliver cleaning services including a do-nothing option have been reviewed.

4.1 Do nothing

This is not a viable option as the existing contract expires on 31st December 2019.

4.2 Enter into a new contract with Enfield Norse

Enfield Norse was asked to quote to provide the service for a maximum 4-year period, under a revised specification, based on an initial two-year period, followed by the option for two one-year extensions, subject to satisfactory performance.

For the initial two-year period, Enfield Norse was asked to fix the price except for increase any required to meet wage rises under the annual London Living Wage (LLW) review.

This option does not meet the Council's revised specification requirements, nor does it offer the greatest potential to benefit from reductions in the number of building required to be cleaned or other operational efficiencies. It does not align employee terms and conditions with Council employees. It is the most expensive option initially and over 4 years.

Please see Part 2 report for further information.

4.3 Enter into contract with a new supplier following competitive tender

A tender (with no obligation to appoint) was undertaken in conjunction with Corporate Procurement, utilising the Eastern Shires Purchasing Organisations (ESPO) framework of 18 eligible companies, via the London Tenders Portal.

Tenderers were invited to bid based on a maximum 4-year contract based on an initial two-year period, followed by the option for two 1-year extensions, subject to satisfactory performance.

For the initial two-year period the tender bidders were asked to fix the price except for any required to meet wage rises under the annual London Living Wage (LLW) review.

The bids were evaluated based on 60% quality and 40% price.

Enfield Norse is one of the contractors on this framework so in addition to the option above was able to bid through this route.

This option does meet the Council's revised specification requirements but does not offer the greatest potential to benefit from reductions in the number of building required to be cleaned or other operational efficiencies. It does not align employee terms and conditions with Council employees. It is the cheapest option initially and over 4 years but would not be the cheapest medium term option.

Please see Part 2 report for tender analysis.

4.4 Bring the service in-house

Insourcing the service and transferring the staff currently employed by Enfield Norse into the Council under the provisions of the Transfer of Undertakings (Employment Protection) Regulations 2006.

The service would be managed within the Facilities Management function within the new Construction, Maintenance and Facilities Management Team under the Director of Property & Economy. This team currently manages the contract relationship with Enfield Norse so has a detailed understanding of the properties, specification and cleaning related issues. The proposed structure includes management and supervision staff.

This option does meet the Council's revised specification requirements and offers the greatest potential to benefit from reductions in the

number of buildings required to be cleaned or other operational efficiencies. A conservative assessment of the number of buildings released and consequent savings has been allowed for in appraising this option.

This option is the only one that also allows alignment of employee terms and conditions with those of Council employees, offering staff better terms than they currently enjoy including the option to join the Local Government Pension Scheme.

Based on a conservative assessment of future cleaning needs it is the not the cheapest option initially or over 4 years, but measures taken during the 4 year period would enable an insourced service to be best placed to be the most flexible and cost effective going forward.

The principle reason for it not being the cheapest option is the cost of supporting employees Local Government Pensions (assuming an 80% take up by cleaning staff in line with the average take up by Council employees on similar grades).

Please see Part 2 report for cost analysis.

5. REASONS FOR RECOMMENDATIONS

Whilst the recommended option is not initially the cheapest (primarily due to the cost of offering Local Government pensions to all staff in the insourcing option) the ongoing review of the Council's Operational Property will result in significant changes to the number of buildings occupied and the range of cleaning and related facilities management services provided. The merger of Facilities Management and Repairs & Maintenance will also offer opportunities for service innovation.

Insourcing the service will offer the maximum flexibility in managing this transition and provide the greatest opportunity to improve service whilst delivering future efficiencies.

Insourcing will also enable cleaning staff (a high proportion of whom are local residents) who work in our operational properties and work day to day alongside Council employed staff the opportunity to move to the same Terms and Conditions and to choose to benefit from the Local Government Pension Scheme.

6. COMMENTS FROM OTHER DEPARTMENTS

6.1 Financial Implications

See part 2 of the report

6.2 Legal Implications

- 6.2.1 Section 111 of the Local Government Act 1972 permits local authorities to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of their functions.
- 6.2.2 In addition, the Council has a general power of competence under Section 1(1) of the Localism Act 2011 to do anything that individuals may do, provided it is not prohibited by legislation and subject to Public Law principles.
- 6.2.3 TUPE “the Regulations” will apply on a relevant transfer which occurs: where a client engages a contractor to do work on its behalf; engages a different contractor to that work in place of the first contractor; or brings the work in house (a service provision change) regulation 3(1)(b) of the Regulations. The Council will need to ensure that it complies with the said requirements of the Regulations where applicable. Depending on whether the service is in-sourced or out-sourced, the Council will need to provide the Employment Liability information to the bidder as well as adhering to the requirements of informing and consulting employees via their representatives especially if the decision is made to bring the service in house.
- 6.2.4 The Council will have to be mindful of the Teckal Requirements on the Enfield Norse JV if the Corporate Cleaning Service provision is brought back in-house. The conditions to be fulfilled to benefit from the Teckal exemption are codified in the Public Contract Regulations 2015 (Regulation 12). Enfield Council is one of the contracting authorities of the joint venture and will need to exercise a control which is similar to that which it exercises over its own departments.

Teckal has 3 main requirements:

- a. the contracting authority (Enfield) exercises jointly with other contracting authorities (Norse) a control over that legal person which is similar to that which they exercise over their own departments
- b. more than 80% of the activities of that legal person (the JV – Enfield Norse) are carried out in the performance of tasks entrusted to it by the controlling contracting authorities (Enfield and Norse) or by other legal persons controlled by the same contracting authorities (Norse via Norfolk Council).

There must also be no direct private capital participation in the controlled legal entity.

- c. there is no direct private capital participation in the controlled legal person.

In order to make sure that the JV is Teckal compliant, Enfield Norse will need to ensure that 80% of the provision is being provided back in-house either to Norse or the Council as opposed to external entities. This is something that will need to be monitored.

- 6.2.5 The Council must continue to comply with all requirements of its Constitution and CPRs. The Council must comply with its obligations of obtaining best value, under the Local Government (Best Value Principles) Act 1999.

- 6.2.6 Whichever option was recommended it should be noted that no immediate decision has been made to include schools within the provision as they have their separate contracts with the existing JV. The service being procured will namely be with regards to Corporate buildings.

The JV will remain in existence in order to provide cleaning services to the schools. The Council will need to review its involvement of the JV after 3 months of the services being brought in house in order to see how economical it is to have the JV running.

- 6.2.7 The Council will have to be mindful of any pension implications if a decision is taken in due course to terminate the running of the JV. If the JV terminates then its remaining employees via the Admissions Agreement will cease to have access to the pension fund. There will be some cost implications such as ensuring that any credit due in the form of any necessary contributions have been paid up until the cessation date. Other costs will include obtaining costs relating to the actuarial valuation of the fund. Costs with respect to any actuarial expenses will be borne by the Council as the Administering Authority.

- 6.2.8 The issue of the JV and the service may be conflated as the schools have their own service contracts with the JV. If the service terminates in December and a decision is made to insource or outsource the service. Those employees working for schools will still have access to the pension fund via the admissions agreement. Termination of that agreement will only happen if the requirements under the termination clause are met. The

most likely event which allow for the termination of the admission agreement would be a winding up of the company under clause 8.3(b).

6.3 Property Implications

A well-managed cleaning service as part of an effective facilities management regime can help reduce repair and maintenance costs and prolong the life of assets.

The ongoing review of the Councils Operational Properties has already identified the potential for a reduction in the number of buildings that will require cleaning (and other services) and offer the potential for savings from this budget.

6.4 Procurement Implications

Any procurement must be undertaken in accordance with the Council's Contract Procedure Rules (CPR's) and the Public Contracts Regulations (2015).

A business case was presented to the Procurement & Commissioning Review Board on 28/06/2018 with an agreed action plan.

The Enfield Norse Joint Venture was extended from its initial expiry date of 31/03/2019 to 31/12/2019 to enable options for the future contract to be identified. A further competition using the ESPO Total Cleaning Services Solution Framework (Lot 1A, General Cleaning, Window Cleaning and External Cleaning) was carried out to obtain comparable prices so that the service could undertake a benchmarking exercise.

The procurement was carried out on the London Tenders Portal (DN418239). All 18 suppliers on the framework covering the London Region were invited after being initially contacted in advance of the opportunity being published.

9 suppliers expressed their interest in the opportunity when contacted in advance of publication. 6 suppliers submitted a response, 4 opted out and the other x 8 did not respond.

It is recommended that the service checks with ESPO to determine the monitoring of the economic and financial standing of the framework suppliers to determine if there are any risks of supplier's services being interrupted.

Please also see Part 2 report for further details on the procurement exercise.

7. KEY RISKS

- 1.1. **Cause:** The TUPE process cannot be successfully completed in the required timescale

Effect: This would cause a delay in the insourcing and potential leave the Council without a cleaning contract in place.

Mitigation: It is proposed to extend the existing contract by 3 months to allow sufficient time to manage the process.

- 1.2. **Cause:** The Operational Property Review does not identify early opportunities to reduce the portfolio of buildings requiring cleaning services

Effect: The cost of insourced cleaning services costs more in the medium term than the cheapest outsourced option.

Mitigation: The Operational Property Review has already identified a number of opportunities which are being pursued and will form part of the Medium-Term Financial Plan.

8. IMPACT ON COUNCIL PRIORITIES – CREATING A LIFETIME OF OPPORTUNITIES IN ENFIELD

8.1 Good homes in well-connected neighbourhoods

The Cleaning Service includes 20 Sheltered Housing schemes, so the proposals will assist in insuring we maintain high quality accommodation to promote independent living.

8.2 Sustain strong and healthy communities

Effective facilities management of fewer, better located buildings that better meet the current and future needs of customers and staff and that are more cost effective to run will help ensure that we protect those most in need by continuing to deliver the services they rely on

8.3 Build our local economy to create a thriving place

Insourcing the service will enable us to ensure that all staff working to manage our corporate buildings continue to be paid at least the London Living Wage and benefit from the same terms and conditions, including the Local Government Pension Scheme as other Council employees.

9. EQUALITIES IMPACT IMPLICATIONS

Local authorities have a responsibility to meet the Public Sector Duty of the Equality Act 2010. The Act gives people the right not to be treated less favourably because of any of the protected characteristics. It is important to consider the needs of the diverse groups with protected characteristics when designing and delivering services or budgets so people can get fairer opportunities and equal access to services.

A Predictive EQIA has been undertaken and has highlighted no negative impact on residents from the protected characteristic groups or persons due to socio-economic factors.

Bringing the service in house will enable the Council to better ensure that the service meets our obligations under the Equalities Act 2010.

10. PERFORMANCE AND DATA IMPLICATIONS

The provision of Cleaning Services must be monitored to ensure that the cleaning standards are at the required level. This will be monitored by Key Performance Indicators (KPI's).

Additionally, with Corporate Landlord approved and ongoing, this will see all (non HRA residential) buildings being transferred into Property & Economy management, thereby improving the existing management situation.

11. HEALTH AND SAFETY IMPLICATIONS

Employers have a responsibility to provide a safe working environment for staff, tenants and visitors to Council buildings.

If the cleaning service is insourced, the Council (as the employer) will be responsible for ensuring the health and safety of the cleaning staff (such as undertaking risk assessments, training etc) as well as ensuring that the cleaning activities do not give rise to health and safety risks to staff, occupiers and visitors to the council buildings.

12. HR IMPLICATIONS

Insourcing the Cleaning Service will have direct HR cost implications for the Council as follows:

This is likely to result in the transfer of a significant number of contractor employees into the Council under the Transfer of Undertakings Regulations (TUPE) on their existing terms and conditions of employment. It is anticipated that this would include up to

140 individual members of staff (up to 60 FTE), however numbers are not confirmed until a TUPE process is commenced.

The Procurement and Property & Economy services will need to work closely with the HR Service and Legal Service to ensure that all legal requirements of TUPE are met.

Any new staff appointed to an in-house service following the initial transfer of staff would need to be appointed on (potentially more favourable) Council terms and conditions of service, which will have cost and employee relations implications. This could initially result in a “two-tier workforce” but it is intended that we will offer harmonisation of terms at the earliest opportunity.

Depending on the numbers of staff and posts identified for transfer, in a TUPE situation, the need for additional resource in HR and Payroll to provide support services for transferred staff, has been considered.

The proposed extension to the existing contractual arrangements will support a meaningful consultation process ahead of any transfer. This includes review of terms and conditions and consideration of measures relating to the transfer of staff to the Council.

Additional HR and payroll resources will be required during the transfer including the management of the TUPE process and ongoing after transfer, due to the number of part time roles and anticipated staff turnover.

It must be noted that because of future changes in the number of buildings requiring cleaning services it is proposed that the number of cleaning operatives will be reduced, it is intended that this will be achieved through managing staff turnover/vacancies which are typically higher than average in this sector.

13. PUBLIC HEALTH IMPLICATIONS

Ensuring a robust cleaning specification and service delivery is in place is a key element in protecting the health and wellbeing of staff, councillors, customers and visitors in Council owned and managed property. The revised specifications are designed to deliver an efficient and effective service. Bringing the contract in house will ensure greater control.

Employment terms and conditions that promote flexible working and support ongoing financial security through pension opportunities can be demonstrated to improve employee wellbeing.

Background Papers

None