



BROMLEY CIVIC CENTRE, STOCKWELL CLOSE, BROMLEY BRI 3UH

TELEPHONE: 020 8464 3333

CONTACT: Keith Pringle

keith.pringle@bromley.gov.uk

DIRECT LINE: 020 8313 4508

FAX: 020 8290 0608

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EXECUTIVE

Meeting to be held on Wednesday 23 March 2016

For the item below, please see attached consultation responses received after the consultation deadline of 24th February 2016

- 14 **GATEWAY REPORT COMMISSIONING - PROPOSED TOTAL FACILITIES MANAGEMENT CONTRACT** (Pages 3 - 10)

Copies of the documents referred to above can be obtained from
<http://cds.bromley.gov.uk/>

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TFM Queries from Strategic Property

Please note, if Members agree to proceed with the Amey/Cushman & Wakefield (C&W) proposal, questions relating to TUPE will be considered and responded to as part of a separate TUPE consultation.

1) You state in the consultation document that “the proposed saving comprises a reduction in one FTE within Strategic Property Services (£60,000)” When asked to clarify this at the consultation meeting you inferred that it resulted from the resignation of the Head of Strategic property. However, her MG 4 post appears to have been reallocated to the Client Unit (subject to evaluation of the post). If this is the case and the Client posts are to be newly created posts, in addition to the existing posts shown as being subject to TUPE transfer, please can you clarify how any saving can be made, and specifically how a £60,000 saving (reduction in one FTE) can be made without any redundancies? Does this mean that this post would transfer and then be engaged on non-Bromley work?

The reference to MG4 was just to highlight that a saving had been made. The client post is not the Head of Strategic Property post, but a newly created post. The new post will be advertised and may or may not be appointed internally. In the case of an internal appointment, the saving of £60k therefore would already have been made. Any further issues relating to staffing would be dealt with as part of any subsequent TUPE consultation.

2) You state that C&W will seek to generate a return by growing net investment income by a minimum of £1million (indexed) within three years. Please can you provide the assumptions made or factors that Cushman and Wakefield have taken into account in coming to this assessment. Have they identified the properties from which they consider the additional income can be achieved? We have previously provided a schedule that gives examples of properties where work already undertaken will result in increased income in the future – I attach a further copy for your convenience. Please can you confirm that none of this income will be credited to the new £1million income, as it will not result from any new initiatives introduced by C&W?

C&W’s commercial knowledge and experience will allow them to grown the next investment income by a minimum of £1m within 3 years. They are incentivised to achieve this through gaining a share of the additional income achieved. In particular they have put forward the following strategies:

- **re-shaping the investment portfolio to improve income returns and income growth prospects**
- **adopting a more commercial approach to managing rents**
- **adopting a more commercial approach to service charge recoveries (where applicable).**

The £1m is new income, separate from any additional increase where work already undertaken will result in increased income in the future.

Capacity issues within Strategic Property in the last 18 months have resulted in delays in delivering some key areas of work which will have impacted on our revenue income streams.

3) We understand that you are not currently able to give information about future office locations, but please can you advise whether C&W have specifically requested the use of office accommodation in the Civic Centre and, if so, how much accommodation they requested.

At this time we are unable to confirm this, this matter would be addressed during the TUPE consultation period and due diligence if Members agree to proceed with the Amey/ C&W proposal.

4) Please can you advise whether staff required to relocate to an alternative office would be entitled to payments to reflect their increased cost of travel. Has there been any discussion about which C&W office would be the new home of the service, and, if so, please can you advise which office has been selected?

This would be addressed as part of TUPE consultation if the contract is awarded to Amey/C & W.

5) Was there a requirement that, if the service is not to be located at the Civic Centre, alternative office provision had to be within a fixed distance of the Civic centre, as used to be the case with some services, e.g. previous Exchequer contracts?

No.

6) Do C&W provide the service that is proposed for Bromley to any other local authorities? If so, please can you advise which Councils currently employ them, or any that have done so in the past.

C&W have a range of experience in working with a number of public bodies.

7) How has the process already undertaken demonstrated best value? Why was the service not put out to competitive tender? In the absence of such a tendering exercise, how can you be confident that C&W offers the best mix of price and quality?

The Tri-Borough Framework went live on the 1st October 2013 following an extensive OJEU procurement process lasting eighteen months. It was estimated to have cost the Tri-Boroughs £1.1m. Expressions of interests were received from 143 organisations of which eleven submitted responses to the Pre-Qualification Questionnaire. From this, five shortlisted bidders were invited to participate in a two stage Competitive Dialogue process. Three of the Bidders were shortlisted and in May 2013 the Tri-Borough cabinets approved the award of the contract to Amey Community Limited for a ten year contract for the provision of hard and soft facilities management services across their estates.

This process tested value for money principles including the provision of investment in people and systems. The saving on the tendering costs, the ongoing revenue savings and the proposals on future income all show consideration of value for money factors.

8) Please can you advise where the ownership of the Council's property records will rest? We have a large number of paper files – will these be passed to C&W and, if so, will they subsequently be returned to the Council? Who will own the records of activities undertaken and correspondence relating to LBB's properties that arises while the contract is being performed by C&W? What will happen if the records are held in a format which is not compatible with LBB's systems?

LBB will retain ownership and we will specify what format records need to be returned in.

9) Does the saving identified from out-sourcing allow for the cost of the client unit?
Yes.

10) We have advised in the past that the baseline document which sets out our activities represents the work undertaken by the Division at the time it was prepared. Some of this work is predictable, on-going work which will continue throughout the life of the contract (e.g. rent reviews, lease renewals). However, in addition we undertake ad hoc projects in response to members' requirements and policies, and new areas of work emerge over time – such as the property work associated with Academy and Free Schools, which would not have featured in a “specification” or baseline document drafted say 5 years ago. The Division currently has to take on such work, prioritising and meeting Members' requirements, usually from existing resources and, therefore, at no additional cost to the Council. New areas of work that emerge over the contract period cannot, by definition, be identified in the specification. How will C&W be paid for such areas of work – will it be covered by the overall figure which we understand is currently proposed, or will such variations to the baseline document give rise to additional charges? If the latter, it might be that the saving quoted in the consultation document is not “guaranteed”.

The specification required of Amey will be the same as the scope of services currently provided.

11) Please confirm whether the baseline document produced by Strategic Property will be used or that produced by C&W. If the C&W version is to be used, can this be shared with staff in Strategic Property?

The specification required of Amey will be the same as the scope of services now. The specifications have been signed off by Heads of Service and are available from Heads of Service.

12) Has there been a “lessons learnt” exercise following the outsourcing of the Parks and Greenspace client function to TLG? If so, have any issues identified been taken into account in the TFM outsourcing proposals?

A review is always undertaken by the Commissioning Team when services are commissioned to see if there are any lessons to be learnt or if there are any examples of good practice.

13) How is it envisaged that the Transparency Agenda will be delivered?

The specification required of C&W will be the same as the scope of services now. The details will be looked at further during due diligence.

This is an area under consideration at the moment and, if Members agree to proceed with the Amey/ C&W proposal, would be included as an improvement activity within the price agreed.

14) How are vacant posts being dealt with? If they are not shown as being subject to TUPE, were the budgets for the posts included in the assessment of the in-house cost of service provision when the savings were being calculated? You might be aware that we were forced to hold one vacant post in order to fund the cost of consultants to undertake the asset valuations each year following the substantial cut in staff in 2012. We have not filled a vacant post that arose last year because at the time the vacancy arose we understood the outsourcing decision to be imminent.

The staffing budgets for all three services, excluding client costs, would transfer across.

15) If Members agree to take forward the outsourcing, will the existing staff have an opportunity to meet their new employer at Team meetings as well as at 1:1 meetings as there has been no contact with staff to date?

Yes, this would be addressed as part of TUPE consultation.

16) We assume that the report to the Executive will include a full and detailed analysis of the risks that will arise from outsourcing the services (both cost and quality) and that Members will be advised of the change in the relationship that will result between staff dealing with cases and Members – i.e. they will no longer have direct access to such staff.

Noted, this is the same as with all of the currently commissioned arrangements, as Members will be aware.

It would be helpful if you could identify the exact risks that have not been identified already in the report or during this process. A number of risks have been identified by the TFM Project Team regarding the lack of and quality of data currently held by Strategic Property and the delays in meeting important deadlines.

17) Staff employed at the Civic Centre took their jobs in the knowledge that they would be working at that location. If it transpires that, following commissioning, they will have to relocate to London, this will involve (in most cases) a big difference in travel time to and from work and, as a result, change the work/life balance significantly. Will staff be offered redundancy or alternative working arrangements if they do not wish, or are unable to work in London due to external factors, i.e. childcare provision, caring for an elderly relative, health concerns etc.?

At this time we are unable to confirm this, this matter would be addressed during the TUPE consultation period and due diligence if Members agree to proceed with the Amey/ C&W proposal.

18) What assurances can you give to staff that their comments are going to be taken seriously by Members, and that the decision to outsource the TFM bundle of departments is going to happen irrespective of what staff say?

All questions raised by staff throughout the consultation process and the answers given as the management response will be seen by Members as part of the decision-making process.

19) Has there been any consideration of how the client/contractor split will be made? The baseline document that we produced covered all our work, without any assumptions about which functions/responsibilities might be retained by the client. We assume that this will affect how C&W have priced for the work.

The specification required of C&W will be the same as the scope of services currently provided.

20) Please can you confirm that all affected staff will be able to see your draft report to the Executive and will have an opportunity to raise any further questions that arise?

The link to the published report will be sent around to all affected staff.

Written response from Trade Unions

The management response is listed in bold.

Dear Colin,

I write further to previous correspondence from staff (both individual and group representations), and the meeting of the Local Joint Consultative Committee where the Amey contract was briefly discussed (draft mins available Item 25 at <http://cde.bromley.gov.uk/documents/g5487/Printed%20minutes%20Thursday%2025-Feb-2016%2018.30%20Local%20Joint%20Consultative%20Committee.pdf?T=1>).

Q1. In addition to all previous matters raised I would like to flag the following from last week's Union / Commissioning Team meeting.

- a. Despite assurances to the contrary members have not, and indeed cannot, have made a decision on a like for like basis. This is due to the output nature of the "specifications" and the fact that so much remains outstanding, subject to due diligence. The numbers of staff may change and the "output specifications" leave the door wide open for Amey to profit at the expense of service through the quality of decisions / advice to the Council not in its best long term interests.

Service Heads, Managers and staff have been involved in the drawing up of the specifications. The Heads of each service have signed off their specifications as being correct and representative of the work performed currently.

- b. Concerns about the failure to acknowledge and appreciate the objective decision making nature of many of the activities being proposed for outsourcing.

A contractor would be contractually obliged to provide useful and impartial information. It is expected of a professional organisation with experience and knowledge to properly inform the council of its duties in an objective manner.

- c. Concern about the inclusion of Cushman & Wakefield into the Framework as part of the domestic supply chain, with inadequate tendering. Are Bromley the first / only authority who will be using C&W through the framework? The Commissioning Team advised the unions that they had been brought in as a sub contract / "domestic supply chain" and that the commissioning team had "checked their prices against the market". This appears at odds with Q&A qu 44 [of Appendix 4 of the Committee Report Executive 23/03]? There is concern about the rigor of this checking which has not been reported or assessed– if on the basis of the current commissioning of pieces of work this is not a robust approach. Tenders are usually priced by the job rather than the hour and where hourly rates are supplied they are indicative of the experience of the individual that the company puts on

that job. Different companies have different specialisms and therefore different skills and rates, therefore, LBB currently uses different companies for different pieces of work.

The Tri-Borough Framework went live on the 1st October 2013 following an extensive OJEU procurement process lasting eighteen months. It was estimated to have cost the Tri-Boroughs £1.1m. Expressions of interests were received from 143 organisations of which eleven submitted responses to the Pre-Qualification Questionnaire. From this, five shortlisted bidders were invited to participate in a two stage Competitive Dialogue process. Three of the Bidders were shortlisted and in May 2013 the Tri-Borough cabinets approved the award of the contract to Amey Community Limited for a ten year contract for the provision of hard and soft facilities management services across their estates.

This process tested value for money principles including the provision of investment in people and systems. The saving on the tendering costs, the ongoing revenue savings and the proposals on future income all show consideration of value for money factors.

C&W have been properly included by the Framework Owners (the Tri-Boroughs) and therefore are available to LBB to use in compliance with regulatory requirements. There are service synergies in having a formal relationship between the FM provider and the Estates Management provider.

- d. The Commissioning Team confirmed that there were “marginal savings” but that there were “financial incentives” for Amey to make greater savings (the 80/20 split). Amey are incentivised to make savings during their contract. Since Land and / or property decisions related to maintenance or disposal will have long term implications. Amey are not incentivised to give the Council impartial advice about the long term implications (financial or other) if that advice would undermine the potential for Amey to realise a profit by encouraging the Council to take short term savings.

We disagree, we will have a Client to oversee this and give advice.

- e. The question of quality is of great importance to members who have recently introduced a “mystery shopper” approach to some planning services. There will be no scope to manage such matters of quality through an output specification. Particularly if, as has been the case in recent contracts, the contractor has a responsibility to self-assess much of the contract.

This contract will be self-monitoring and the contractor will be contractually obliged to inform LBB of any issues. In addition, the contract will be overseen by the Client and the contractor will have to attend Member scrutiny meetings where they will be held to account, as is the case with other current contracts.

- f. In discussion about a specific post which is being outsourced from Environmental protection you advised that the “lions share” of the work in that post was predominantly with operational property. This

comment illustrates the problem with the commissioning of individual services, as the Council loses skills which operate / overlap across several services. Having been encouraged for years not to work in silos and to act as “One Bromley” the commissioning process is now pulling apart the linkages and the beneficial synergies and replacing them with contract imposed hurdles (ref problems around working with TLG). This, in addition to the cuts to services, meant that the Council is, like the game “Kerplunk”, removing the individual sticks which enable it to function effectively and efficiently. These risks destabilising the Council’s ability to operate or further increasing reliance on contractors who, at additional cost but without guaranteed quality, will cover the very gaps brought about by commissioning.

The Council has a proven record in outsourcing services efficiently and effectively for the last 25+ years. The detailed review of the Amey/C&W proposal demonstrates there will be increased effectiveness and efficiency in the new working arrangements.

Q2. Re Q&A - concerns that the responses are very limited and in some instances appear misleading:

- a) Heavy reliance throughout on the “due diligence” process to give any clarity regarding the shape of the service going forward.

The purpose of the due diligence process is to ensure that any remaining issues are addressed, that there is a mutual understanding between LBB and the contractor and it allows the contractor to understand LBB requirements and current processes in better detail. It is good practice, and the Council’s normal process, to carry out due diligence to ensure the handover arrangements are smooth.

- b) Assurances that “no staff are at risk of redundancy” (Q&A qus 10 & 11 [of Appendix 4 of the Committee Report]). However, when meeting with the unions the advice was that 51 staff had been identified as going forward through the contract and that due diligence may lead to “measures”, which might include reductions in staff.

In the event that Amey are awarded the contract they will need to consult with staff and trade unions on any measures that they envisage they need to undertake in relation to staff that are deemed to be in scope for a TUPE transfer. If it were proposed that they needed to restructure, for an economic, technical or organisational reason, then they would be required to provide details. This would be part of the due diligence process and the Council is not at that stage of the process at this time.

- c) Whilst accepting in the meetings with staff and unions that the “measures” that Amey might propose would become apparent through the due diligence.

As above.

- d) References to TUPE regulations to reassure staff in response to concerns about future employment, when, as was highlighted at the staff meetings, the protections afforded are limited beyond the date of

transfer. Also a lack of clarity in response to the question about admitted status pensions.

In the event that Members agree to the Amey/C&W proposal, this would be addressed during TUPE consultation.

- e) Reliance on the supposed “sign off by the Heads of Service” in response to many concerns relating to the quality of service and potential conflict of interests. This response despite the continued concerns expressed that the output specifications are not in fact specifications merely schedules of activities which will not be able to guarantee quality.

The Heads of each service have signed off their specifications as being correct and representative of the work perform currently. Ultimately, the only people that can sign off the specifications are the people that do the job.

- f) The matters raised throughout the consultation, verbally and in writing, should be fully set out and given proper consideration in the report to enable members to balance the risks of this outsourcing proposal for such marginal immediate savings, and the hope of longer term savings which, if realistic, would be more cost effectively achieved in house by appropriately resourced services.

Noted.