

**Decision Maker:** Executive

**Date:** 15<sup>th</sup> October 2014

**Decision Type:** Non-Urgent Executive Key

**Title:** **COMMISSIONING - PROPOSED TOTAL FACILITY  
MANAGEMENT CONTRACT**

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**Chief Officer:** Marc Hume/Nigel Davies/Mark Bowen

**Ward:** All.

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1. Reason for report

- 1.1 As part of the 2015/16 Budget process all areas of expenditure have been scrutinised by officers with a view to delivering services in a more efficient and effective way, particularly given the significant funding gap identified in the four year financial forecast. This has included looking at the option of outsourcing services through the Commissioning approach where appropriate.
- 1.2 In light of this budget and service scrutiny, this paper reports back on the outcome of the 'market intelligence' exercise that has been undertaken with regard to Facility Management and Public Protection Services. The Report is looking in particular to establish the programme/timescales in line with the Council's financial strategy commencing with a 'gateway' report to the Executive in February 2015 including confirmation of the 'baseline' option that will be market tested subject to the finalisation of the Council's budget for 2015/16.
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2. **RECOMMENDATION(S)**

2.1 **That the Executive:**

**As part of the tender process:**

- i) **Confirm that the services that are identified in Appendix 1 form the basis for the 'Bundle' of services to be market tested, subject to any further comments that may be received and finalised at the Gateway report stage.**
- ii) **Seek expressions of interest under the Community Right to Challenge until the 31<sup>st</sup> December 2014**

### Corporate Policy

1. Policy Status: N/A.
  2. BBB Priority: Excellent Council.
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### Financial

1. Cost of proposal: N/A
  2. Ongoing costs: Recurring cost. £7.4m
  3. Budget head/performance centre: Building Control - £11.5k; Facilities Management - £2.3m; Land Charges - Cr £168k; Operational Property - £328k; Planning Strategy - £1.5m; Strategic Property - £619k; Public Protection - £2.7m; Carbon Management - £69k
  4. Total current budget for this head: £7.4m (2014/15)
  5. Source of funding: Core Revenue and Grant
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### Staff

1. Number of staff (current and additional): 202.43 FTE's (201 staff)
  2. If from existing staff resources, number of staff hours: N/A
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### Legal

1. Legal Requirement: Statutory requirement.
  2. Call-in: Call-in is applicable
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
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### Ward Councillor Views

1. Have Ward Councillors been asked for comments? <please select>
2. Summary of Ward Councillors comments:

### **3. COMMENTARY**

3.1 The Council continues to face a period of unprecedented reductions in public funding and over the next few years it will need to identify savings in the region of £50m to balance the revenue budget.

3.2 As part of meeting the Council's future years' "budget gap" it is essential that officers consider alternative service models which will maintain the quality of our services whilst at the same time provide financial savings. In light of the above, this report describes the major aspects of the Total Facilities Management (TFM) project that the London Borough of Bromley is seeking to engage in a competitive process to award either a single or suite of Total Facilities Management Contracts.

3.3 In the London Borough of Bromley, 'Total Facilities Management' is deemed to cover a broad range of distinct service areas which include the regulation of businesses, the protection of residents and communities and the services which support growth and sustainability. The services include the following:

- Operational Property
  - Reactive
  - Planned
- Facilities & Support Services
  - Mail services
  - Committee Room Support
  - Porters and attendants
  - Print management
- Strategic Property
  - Acquisitions
  - Disposal
  - Management of Non-Operational portfolio
  - Capital Works
- Planning Services
  - Development Control
  - Local Land Charge Service
  - Building Control
- Public Protection
  - Licensing
  - Food Safety
  - Community Safety
  - Environmental Protection
  - Trading Standards
  - Housing Enforcement
  - Public Health Nuisance
  - Housing Improvement
- Carbon Management and Reduction
  - Carbon Management Programme

3.4 These services are currently provided by 201 employees (202.43 FTE's). Further details on the distinct service areas are found in Appendix 1, and summarised below as follows:

<b>Service</b>	<b>No of Staff</b>	<b>FTEs</b>
Operational Property	21	19.80
Facilities and Support Services	19	18.52
Strategic Property	12	12.60
Planning Services	54	60.03
Building Control	13	16.25
Land Charges	6	6.10
Public Protection	74	67.53
Carbon Management	2	1.60
<b>TOTAL</b>	<b>201</b>	<b>202.43</b>

3.5 Information was requested as part of a Market Intelligence exercise around Facility Management in order to seek the market's views on the development of a local model of services, the capacity of the market to supply these services and the level of interest in this proposed procurement activity, in particular the Authority was seeking to gain an understanding of:

- Potential interest from the market to deliver a range of services.
- Preferred packaging of the services for best benefit to the Council and the Contractor.
- The areas of service delivery that potential contractors would be interested in tendering for.
- The length of contract(s) to best suit individual packages or the service as a whole.
- Experience of contractors in delivering similar services to the Public Sector.
- The attractiveness of the Council's services and how they could be improved to make them more attractive to the contractor if at all.

3.6 Originally, two separate work streams were commenced, one looking at Facility Management and Planning and one looking at Public Protection Services . Four returns were received in total; two returns were received with regard to the FM services and two returns also being received for Public Protection Services. As a consequence of the feedback and comments from the market intelligence exercise, both work streams have now been combined into one new work stream, Total Facilities Management.

FM Services	Carillion (AMBS) Ltd Serco
Public Protection	Capita LBB In-House Service

3.7 Meetings were held with all four organisations. Feedback from the meetings is detailed below.

## **Facility Management**

- 3.8 Both Carillion and Serco expressed a willingness to bid for the full range of services on offer citing a number of influencing factors whereby they felt that efficiencies could be achieved:
- Improved process and procedures
  - Supply chain management
  - Investment in technology and the combination of similar 'role' types to maximise staff resources.
  - Leverage across the broader organisational structure to maximise resources.
- 3.9 Additional areas of interest for inclusion in a bundled contract were highlighted as energy efficiency (carbon management) and Environmental Health and Licensing.
- 3.10 The general view was that the market would look at 10 year contracts as a minimum. This term afforded them an opportunity to recover early upfront investment. The view of the companies interviewed was that contracts of less than 7 years were not deemed of sufficient length to warrant bidding.
- 3.11 Two additional meetings were held with EC Harris to specifically consider the inclusion of Planning with a further meeting with CBRE Ltd. to consider the benefit of including the Strategic Property Function within the bundle.
- 3.12 The market was of a view that there was a significant opportunity to develop local business consultancy services to offer local companies a one stop shop for planning, building control and energy efficiency matters. There was also a view that this could be further developed in areas such as environmental health and licensing offering potential greater economies of scale.

## **Public Protection**

- 3.13 Capita are keen to bid for Public Protection Services and believe that savings could be achieved of between 10%-15%, or up to 20% if a broader bundle of services was offered to the market. Their view was that normally services such as Building Control, Planning and Highways Maintenance would be included in the bundle, in a sense the larger the bundle the bigger the potential savings.
- 3.14 They also referenced the inclusion of CCTV and Monitoring plus Community Safety and Enforcement activity.
- 3.15 Service effectiveness and economies of scale result from a one stop shop approach which is embedded within their operating structure leading to a greater level of responsiveness through a multi-disciplinary team approach.
- 3.16 Similar to the responses from Carillion and Serco, Capita emphasised the benefit of including Planning and Building Control within a broader Property/FM related contract. Capita referenced their involvement in the delivery of planning services in Salford which included member liaison.

- 3.17 The Government is committed to giving public sector workers the right to bid to take over the running of the services they deliver. Two or more employees of the relevant authority are eligible to use the right. The expectation is that employees will form an employee led structure to take on the running of services under the Community Right to Challenge as set out in the Localism Act 2011. Employees using the 'Right' are not expected to have finalised all of their arrangements before submitting an expression of interest, but will need to form a separate legal entity in order to bid in a procurement exercise. The Community Right to Challenge applies to all relevant services, provided by a relevant authority. The provision of the services currently provided under the Public Protection banner would be deemed to fall within this relevant category
- 3.18 In order not to delay the broader commissioning programme it is considered prudent to specify how the period whereby expressions of interest can be accepted by the Authority. By not doing this, expressions of interest could be received at any time during the procurement process potentially leading to delays. By publishing the intent now, it will be possible to manage the response in line with the commission programme as set out in appendix 2.
- 3.19 The In-House Public Protection Management Team also expressed an interest and were confident that they would be able to generate new areas of income and advised that they were keen to go down this route. Overall, there was a lack of detail at this stage on proposed staffing structure/secondment/TUPE/redundancy. The in-house element would only be relevant if the contract was divided into lots as the in house team would not be considered suitable for consideration for large multi-faceted contract.
- 3.20 The In-House Public Protection Management Team have since approached the Cabinet Office for support to develop a business case to move towards potential mutual status. (No decision has yet been taken by the Cabinet Office.) The in-house team has also received support from Bromley Healthcare, an existing mutual. Discussions with Bromley Healthcare are proposed to determine the potential funding position with regard to back office costs such as HR, Finance and IT etc. and to assess the financial viability for Bromley Healthcare.
- 3.21 The Council in developing this procurement option is looking to work with suppliers who will work closely with us and is clear about its ambition and the outcomes that it will be looking to achieve through this process, in particular:
- Increased efficiencies and reduced costs by exploring alternative delivery models, with organisations operating on economies of scale through back office functions and flexible workforces.
  - Assurance that the Council meets its statutory responsibilities whilst passing on operational responsibility and cost management
  - Reduction in staff numbers and costs through the transfer of staff resource.
- 3.22 These services are 'bundled' together for a number of reasons, the primary one being that they exist to deliver outcomes which benefit local residents and businesses, added to this, in the main the services listed above are process driven and prescriptive in their delivery. Some of the services listed, fall within the definition of statutory services, but the Authority does have flexibility in the standard and quality of the services it delivers. Outsourcing, as is proposed in the report, does not excuse the Authority from its statutory duty and the Council will need to be clear as it develops the market documentation that it continues to meet its statutory responsibilities whilst passing on operational responsibility and cost management to the third party supplier.

- 3.23 The Council will be looking to retain a small in-house intelligent client team to provide strategic service leadership and contract management in terms of ensuring that the proposed out sourced services continue to meet the aims and objectives of the Council and that the Council's statutory duties are effectively delivered. Until the final bundle of services to be market tested has been finalised, it is not possible to provide any further detail on the size of this client team.
- 3.24 There will inevitably be a change in the relationship between member governance and third party performance as a consequence of moving forward with this project given that the aim would be to have the smallest client team possible from the outset of the new contract, with the contractor taking the lead role in managing queries and issues.

#### **4. Procurement Route**

- 4.1 The current Procurement Regulations allow, under normal circumstances, for the use of an "Open" or "Restricted" (Two Stage) tender process, with other arrangements such as the Competitive Dialogue Process and Negotiated Procedure only allowed to be used in specific circumstances. While the Dialogue Process might be used in this case, due to the complex nature of the intended arrangements, it only allows for a somewhat curtailed discussion around potential service delivery methods and no negotiation on price.
- 4.2 The newly agreed EU Procurement Regulations are due to be implemented in the UK around the turn of the year. While still providing the first three procedures identified above, they introduce as a replacement for the Negotiated Procedure the use of a Competitive Dialogue with Negotiation procedure for use in appropriate circumstances which are met by the intended contract. The new procedure allows for a fuller discussion on service delivery arrangements, price and alternative proposals – providing an identified minimum requirement and the award criteria are unchanged, via direct negotiation. It is considered that the use of this new arrangement provides the best fit for the Council's intended contracting requirements and will be the best allowable approach to secure a successful tender/contract outcome. The timetable identified accommodates the use of this process and the tender arrangements to be used.
- 4.3 A key point of the new process is that it specifies the extent to which the Authority can change its requirements during the process. The Directive specifically precludes an authority from making changes to:
- the description of the procurement
  - the part of the technical specifications which define the minimum requirements
  - the award criteria.
- 4.4 However, it acknowledges the right to make changes to other parts of the specification provided bidders are given sufficient time to make an adequate response. The benefit of this approach is that the Council is clear about what it is seeking to achieve and the bidding companies are clear about what they are looking for and the expectation of them in terms of delivery. It also enables the specification to mirror the 'baseline work stream', as it is likely that throughout the development of the specification and through the process that there is the potential for service reductions to be agreed as part of the Council's broader financial strategy.
- 4.5 On the assumption that the use of Competitive Dialogue with Negotiation is agreed, an indicative programme is set out below:

<b>Total FM – Indicative Timetable CDwN</b>		<b>DATE</b>
Total FM – Gateway Report Procurement Strategy Accepted	PF/Executive Approval  ERPDS – <b>2/2/15</b> Executive – <b>11/2/15</b> (Alternative Dates; ERPDS – 18/3/15 Executive – 25/3/15) Call-in – By <b>19/2/15</b>	<b>Feb 2015</b>
Despatch of OJEU – Publication of UK advertisement. (Check Journal copy deadlines)		<b>March 2015</b>
Return of pre-qualification questionnaire (30 Day Minimum)		<b>May 2015</b>
Client References and any Site Inspections as required – Organisation basis –Capacity and Capability		
Initial Submission		<b>October / November 2015</b>
2 <sup>nd</sup> Submission – (Repeat steps above)		<b>January 2016</b>
Final Negotiations /Evaluation/Finalise Contract on all substantive issues		<b>September 2016</b>
Evaluation Award Report – to Management / ERPDS /Executive		<b>October / November 2016</b>
Award Process – including “Stand still” (10 days)		<b>November / December 2016</b>
Contract Commencement date (Award Notice must be sent within 30 days of Conclusion)		<b>April 2017</b>

- 4.6 A comprehensive Indicative Project timetable is set out in Appendix 2 of this report.
- 4.7 There are a number of current contracts with third parties, for instance those for MFD’s, specialist Software, Security and Cleaning which will be impacted upon by the recommended action. Where possible it is intended to extend these contracts to make them co-terminus with the new arrangements or include them as legacy contracts to be subsumed and managed within the new arrangement as appropriate.
- 5. POLICY IMPLICATIONS**
- 5.1 Moving to a Commissioning Authority is in line with the Authority’s Corporate Operating Principles and is key to achieving the Building a Better Bromley 2020 Vision in ensuring that services continue to be provided as efficiently and effectively as possible, in light of the financial pressures facing the Council over the next few years.



## 6. FINANCIAL IMPLICATIONS

- 6.1 The controllable budgets for the services within Total Facilities Management are shown in the table below, with more detail in Appendix 1: -.

Service	2014/15	
	Budget	
	£'000	
Building Control	12	
Facilities Management	2,322	
Land Charges	-168	
Operational Property	328	
Planning Strategy	1,528	
Strategic Property	619	
Public Protection	2,674	
Carbon Management	69	
<b>Total Controllable Budget</b>	<b>7,384</b>	

## 7. PERSONNEL IMPLICATIONS

- 7.1 In the run up to the production of this report, meetings were held between the Project team and all staff from the service areas currently affected by the proposals as set out in this report. Further communication with staff and their representatives will be taking place before the date of the Committee and any feedback from these discussions will be provided at the meeting.
- 7.2. If Members agree the recommendations in the report, staff and their representatives will be engaged and consulted as early as practical at each stage of the process going forward, subject of course to any commercially sensitive information. There will also be engagement with representatives and stakeholders who might be affected by the proposals.
- 7.3. Any staffing implications arising from the recommendations in this report will need to be carefully planned for and managed in accordance with Council policies and procedures and with due regard for the existing framework of employment law.

## 8. LEGAL IMPLICATIONS

- 8.1 The report sets out options for market testing a range of services presently undertaken by in-house teams. A decision is yet to be taken and a formal Gateway report will be considered by the Executive in early 2015. If it is decided that it is appropriate to undertake a procurement exercise then the procedures are likely to be governed by the Public Procurement Regulations 2015 which are presently in draft form. The draft regulations closely follow the EU Directive and major changes are not expected. Details of procurement options are set out in the body of the report.
- 8.2 Draft Regulation 40 empowers local authorities to undertake market consultations with a view to preparing a procurement and informing economic operators of their procurement plans and requirements. This specifically includes the ability to seek advice from market participants which can be used in the planning and conduct of the procurement procedure provided that it does not have the effect of distorting competition or violating the principles of non-discrimination and transparency.

- 8.3 As is set out in paragraph 3.17 members are recommended to also seek expressions of interest under the “Community Right to Challenge provisions set out in Part 5, Chapter 2 of the Localism Act 2011 and supporting regulations and guidance. Local Authorities are, under Section 82 (2) of the Act, able to set and publicise periods during which expressions of interest to undertake services may be submitted and paragraph 3.3 of the statutory guidance encourages authorities to align dates for submission so that expressions of interest relating to two or more services can be submitted. If an expression of interest is submitted and accepted then it will trigger a procurement exercise.
- 8.4 Section 3 of the Local Government 1999 presently applies to the process and that requires us in the discharge of our duty, to secure economy, efficiency and effectiveness in the delivery of our services, to consult residents and others. Guidance issued in 2011 by the Secretary of State stresses the need for consultation with service users throughout the commissioning cycle. Whilst the point on consultation under section 3 formed one ground of challenge in the case of R (Nash) v Barnet London Borough Council, judicial assistance from that case is limited as both the High Court and Court of Appeal considered the challenge on that point was out of time. However in the High Court, the Judge undertook a detailed analysis of s.3 of the 1999 Act and concluded that a general consultation about "priorities" or other general matters which might assist the Authority in deciding whether to outsource if the type undertaken by the Council was not sufficient. He took care to emphasise that the duty does not extend to consulting on all decisions, great or small, relating to the implementation; he was, however, of the opinion that representatives should have had the opportunity to express views or concerns about the issue of outsourcing of the functions or services in question. The Government is seeking to repeal the duty through Clause 78 of the Deregulation Bill however, unless/until this provision is enacted, it is essential that any consultation undertaken has regard to the specific consultation duties under section 3 as well as any general or staff consultation which will be undertaken.
- 8.5 As with all service issues then, the Council must have regard to the public sector equality duty under section 149 Equality Act 2010 and the need for the necessary equality impact assessments to be undertaken must be reviewed throughout the process.

Non-Applicable Sections:	
Background Documents: (Access via Contact Officer)	