

APPENDIX 4

TFM Staff Consultation Queries

Transfer of Undertakings (Protection of Employment) (TUPE) queries

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. Can you confirm pensions would be protected under 'Admitted Status' provisions?

Will the Bromley staff be able to continue with the Bromley pension scheme?

TUPE Regulations preserve/protect employees' terms and conditions when a business or undertaking is transferred to a new employer. Contracts of employment, which include pensions, remain the same when transferred to the new employer whilst employees remain in the same job. Continuous service and terms and conditions are protected at the point of transfer.

2. Can you confirm how the pension is transferred? E.g. Do we continue to pay into the LGPS with 12% contributions from the employer and circa 5.8% from the employee or do Amey set up their own pension fund on the same or different terms?

See 1 above.

3. Can you confirm that current working hours would be maintained under Amey/ C&W?

See 1 above.

4. I currently work 35 hours plus 35 hours overtime – would this continue?

Staff members would TUPE on the basis of their current contractual terms and conditions. In the event that the contract is awarded to Amey/C&W they would be required to inform and consult on any changes they envisaged undertaking for economic, technical or organisational reasons.

5. Referring to Appendix 1 of the staff consultation document, the current acting role 'Reactive Team Leader' is not shown.

The substantive role would be subject to TUPE.

6. Has there been any consideration given as to whether our current MTC contractors could demonstrate individual operatives being committed to LBB works so that they would need to be included in the TUPE transfer?

When contracts end, if TUPE conditions apply to post(s) then this will be resolved between the two contractors.

7. How long do your TUPE terms and conditions apply for after transfer?

See 1 above.

8. If you took a promotion at Amey/C&W would you still retain the terms and conditions you TUPE transferred with?

See 1 above.

9. One member of the Capital Projects team is on statutory maternity leave (expected to return in August 2016). What are the implications of her transferal?

TUPE would apply in the same way. Staff on maternity leave (and other long-term leave) are being consulted on the proposals along with all other staff who are affected by the proposals.

10. Will redundancy offers be made available to staff at risk?

This question is not applicable as under the Amey/C & W proposal, no staff are at risk of redundancy.

11. Why are voluntary redundancies not being offered, particularly as the commissioning team have stated that many of the current “sold services” will no longer be provided in future?

Whilst employees are not at risk of redundancy, as a consequence of these proposed arrangements, there is nothing to prevent employees requesting voluntary redundancy outside of these proposals. Any requests would be considered on a case by case basis by the Chief Officer, in liaison with the Director of Human Resources. Decisions would be made on the basis of whether there was a financial and business case for agreeing to such a request.

12. When would the new pay day be?

At this time, we do not know whether the current pay day would change. If Members agree to proceed with the Amey/ C&W proposal, this would be addressed during the TUPE consultation period.

13. What happens to the Essential Car User allowance currently payable to staff?

Following a decision by the General Purposes and Licensing Committee the Council’s Essential Car User Allowance is being phased out. Newly appointed staff no longer receive the allowance. As already communicated current staff, who are in receipt of the allowance, will see the allowance reduced by 50% from 1 April 2016, with the allowance being removed completely by 1 April 2017. In addition the mileage rate will increase to 45p per mile. In the event of Amey/C & W being awarded the contract these contractual arrangements would transfer to the new employer whilst employees remain in the same job.

14. What happens to staff who take advantage of the Child Care Plus scheme LBB sign up to?

This scheme is specifically linked to your employment with LBB and is not transferable. Any credits already paid into the scheme can still be used however. In the event that Amey/C & W are awarded the contract they would be able to advise whether they have their own comparable scheme that employees could sign up to.

Casual/ Agency staff

15. A) Confirm under Item 7 of the (Staff Consultation Document) the statement that there would be no general inclusion of contract or casual staff (subject to individual work assessments), in light of rights under time served rules.

In the event that the contract is awarded to Amey/C & W agency workers would not be eligible to TUPE transfer as their employment relationship is with their Agency not Bromley Council. Casual staff will be considered on a case by case basis.

B) If applicable when will TUPE option be notified to the relevant staff?

Casual staff will be subject to individual assessment of each casual work arrangement.

16. Agency staff are vital to the functioning of the Porter/ Attendant team – will agency staff also be subject to TUPE?

No – see 15 A) above.

17. Agency Staff – Your document states that Agency staff are not included. Our current Agency staff provide essential cover in our Attendants and Committee Room Support Teams. Will these posts be retained within the Service? Committee Room Support and Site Support are also provided through the site security contract. Will this continue as, if not, it will place additional hours on the small Attendant Team?

In the event that the contract is awarded to Amey/C & W then it would be for the new provider to consult on how they would envisage managing the cover arrangements for this service.

Annual leave

18. Prior to the transfer date 1st July, will staff then be having their holiday leave capped on a prorata basis or continue with entitlements/commitments?

If Members agree to proceed with the Amey/ C&W proposal, this would be addressed during the TUPE consultation period.

Location of staff

19. Confirm the location staff will be based at with Amey, either in terms of the three teams; planned, reactive and business support or on an individual basis. Will staff continue to work from the Civic Centre?

At this time we are unable to confirm this, although it is likely most staff would continue to be based at the Civic Centre. This matter would be addressed during the TUPE consultation period if Members agree to proceed with the Amey/ C&W proposal.

20. Confirm whether transferred staff will still retain parking rights in the Civic centre.

If staff will continue to work from the Civic Centre, will parking be provided?

This would be covered as part of due diligence and TUPE consultation.

21. Will there be extra money given to staff who change location and subsequently have to travel to London?

If staff are expected to relocate will any additional personal expenses be reimbursed? (E.g. additional travel expense to Kensington and Chelsea

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

Project timescales

22. Confirm the date of the transfer as still being 1st July in view of the moved date for the report to committee now being in March.

If Members agree to proceed with the Amey/C & W proposal, this is still the proposed implementation date, subject to the outcome of due diligence.

Contract details

23. Confirm the term of the proposed LBB contract with Amey/ C&W.

5+3 years.

24. Will Amey be undertaking 1:1 interviews with staff?

This would be addressed as part of TUPE consultation.

25. Is there a break clause or an opportunity to exit the arrangement?

There is a Determination Clause which can be invoked within the first six months of commencement, with no penalties. We can exit the contract if the service is continually faulted. The term of the contract is 5+3 years so there is an option after 5 years.

26. Can we see the Invitation to Tender and other associated documents?

This has been done through an existing framework so these documents were not required.

27. At the initial meeting, it was quoted that the contract would be looked at for both value for money and quality of service, but it appears the quality of service is no longer a requirement.

As part of the evaluation process, consideration has been given to quality and cost of service provision.

Client team

28. Are client team roles being ring fenced to existing staff or being offered externally?

No staff are at risk of redundancy so there is no need to ring-fence posts, however staff may wish to apply for posts via the Council's recruitment processes when they are advertised.

29. Clarify on the proposed Client Team, were there is a job description titled Senior Property Manager, yet the structure chart indicates Senior Project Manager.

This will be rectified.

30. Confirm having become the outsourced contractor, we are still able to continue to meet with and liaise directly with LBB Client departments.

No, all activity will be directed through the LBB client team unless otherwise agreed.

31. Who will the client be?

Please see answer to question 28 above.

32. Some people from Appendix 1 may apply for client roles. Has this been accounted for financially?

Yes.

33. Considering a lot of the works will be electrical and mechanical, there are no such skills in the client team being set up. Would the in house Bromley "client structure" monitoring the Amey contract be capable of monitoring these works? Should there not be an M&E engineer looking after Bromley's interests?

It's an output based specification and the contractor would be subject to adequate monitoring arrangements.

Service specifications

34. What about the opportunity for misunderstanding in the specifications?

Heads of Service have signed off the specifications. Any remaining issues would be resolved in due diligence, should Members agree to proceed.

35. Staff have not been given the full information available. The people who are currently doing the job are best placed to judge the proposal.

The managers of each service have signed off their specifications as being correct.

36. What about the potential for misunderstandings regarding post titles, job descriptions and the specification?

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. These have been passed to Amey/C & W along with job descriptions and staffing structures. Any remaining issues would be resolved in due diligence, should Members agree to proceed.

37. Will Amey be undertaking an examination of individual's current workloads to establish the suitability of current staff resourcing levels?

Yes, Amey/ C&W have been passed information on job descriptions and specifications and structure charts.

38. Is the Amey proposal based on LBB's specifications or Amey/ C&W's specifications?

The proposal and price are based on LBB's requirements and specification which has been signed off by Heads of Service.

39. In the past, we have had to 'absorb' extra work required of us. Would Amey/ C&W require extra money for this work?

We would expect Amey to carry out the full range of works currently performed. The specification is based on the work currently performed by the teams in house.

Due diligence

40. Who would be involved in due diligence?

Amey, Cushman and Wakefield, internal staff the project team and staff that would TUPE transfer should Members agree to proceed.

C&W and Amey relationship

41. Will C&W pass work to Amey?

This will be a partnership and both organisations will be focussed on ensuring the contract works.

42. What is the relationship between Amey/C&W?

Amey is the lead partner and C&W is a strategic partner of Amey.

43. What would happen if the relationship broke down between Amey and C&W?

Amey would be responsible for finding another provider to satisfy the Council's requirements.

44. How was C&W identified as a partner? How do we know they offer the most competitive price?

In the variation order, it states that the rates are aligned with other competitive rates. The price can be checked as value for money on an open book basis.

Interactions with existing contractors

45. How will Amey/ C&W interact with TLG?

An SLA is being prepared internally by the Assistant Director for Streetscene and Greenspace who is responsible for the TLG contract and interactions will be based on this agreement.

46. Will Liberata still be collecting debt?

Yes.

Existing contracts

47. Clarify whether Amey intend to continue with our existing contractor arrangements through to contract completion dates. If not what notice period will be given to these contractors?

This will be covered during due diligence. Amey have said they would run local 'meet the supplier' days for current contractors to see if it is viable for the current contractors to continue to provide these services going forward.

48. How will subsequent contracts for works be procured under Amey? Do they have in-house contractors?

Amey would be responsible for the delivery of the works and the contract would be for a fixed price. They will have a supply chain and they will look to place work with our suppliers if those suppliers can fulfil requirements.

Breakdown of savings/ efficiencies

49. In item 2.5, clarify the makeup of the stated £806k figure and how this relates to the £4.4m as noted in 2.3.

Amey have identified potential savings in some budgets within FM and Operational Property totalling £806k, where they believe they can make 10% savings, split between LBB and Amey on an 80:20 basis.

50. Referring to item 2.3, do the stated efficiencies of £150k relate to posts or budget savings?

The proposal from Amey refers to a number of efficiencies which will be clarified during due diligence.

51. Referring to the item 2.3, what are the consequences if the stated £150k savings are not achieved?

As the contract is for a fixed price, providing our requirements do not change then the price is guaranteed.

52. Where are the efficiencies coming from?

Amey have discussed a number of efficiencies and benefits relating to increased resilience and capacity, Amey/C&W's commercial expertise and greater flexibility.

53. What are the IT costs?

It is anticipated that the IT mobilisation costs will be a maximum of £150k, around £50k of this is required for licences and hardware and £100k on resources.

Capital projects

54. The CPV code for capital projects over £250k was not included in the OJEU notice.

There is a difference between works and services. Our property department tender capital works and, subject to Member agreement, Amey would take over the function of our Property department going forward. Like the Council, Amey would not be providing the works 'in house'.

55. Who will deliver Education capital projects?

The contract will operate as it does now which is that, at times, Amey would provide the service.

56. My understanding is that Amey have indicated they wouldn't be able to perform the variety of roles in capital projects that is currently being performed.

The contract is based on the current specification.

57. The Tri-borough TFM OJEU Notice (TED ref: 3/S 119-204204) does not include an OJEU Code for the Project Management of large Capital Projects (Value over £250,000). A copy of the Notice is attached. The Tri-Borough Committee Decision Award Report, also attached, clearly states that the Framework is only for small capital projects. We do not therefore believe that Strategic Capital Projects can be transferred under TUPE to this Framework.

The Council is not a direct provider, and has not been for a number of years, of any direct building consultancy type services e.g. architects etc. This contract is concerned with the management of the Council's estate, the maintenance of its buildings and associated activities. As at present, and within the specification agreed, we would agree the process for how, when and if necessary, we would commission consultancy skills that may be required with Amey. The Head of Procurement has considered the OJEU codes included in the original Tri-Borough notice and they provide sufficient scope for them to manage the commissioning of project work on our behalf.

58. We have been in dialogue with two other Local Authorities who are already signed up to the Tri-borough Framework. Both authorities confirmed that they did not sign up to deliver Capital Projects through the Framework as, in their opinion, to do so would be unlawful.

The Head of Procurement has confirmed the proposals in this document are not unlawful. I refer you to paragraph 3 of the Tri-Borough Executive Decision Report, in particular 3.4 which states:

3.4 The Councils will be purchasing an end-to-end managed service rather than a simple contracted labour force for delivery with the aim of using common processes in comparable ways to reduce costs, improve compliance and increase flexibility of service across the Councils.

This is exactly the process that this Authority wants to use which is akin to that of Westminster City Council.

59. Amey recently presented how they believe capital projects could be delivered through their framework. It was clear they could only provide a limited project management function, carrying out significantly fewer functions than the current in-house Client side team. They noted that the Council would have to retain a significant client side responsibility for procurement and contract management. Your proposals do not address this gap, but does create a significant risk to the Council.

The specifications for the three services set out the work that officers currently undertake. The specifications have been signed off by Heads of Service and agreed by Amey.

60. In light of the above we believe the two separate Project Management roles in a construction project have been misinterpreted. It should be noted that there are two roles, one 'client side' and one 'project side'. There is a clear separation between both roles with particular emphasis on decision making, probity, transparency and official financial sign off held Client side. By delegating both of these functions to a framework consultant we believe there is a conflict of interest with the council being exposed to significant risk.

The roles currently contained within the Council's Capital Programme Team advise a number of clients across the Council in the delivery of the Capital Programme Scheme. In the event that the contract is awarded to Amey, this role will be taken up by Amey and will be overseen by the client identified.

61. We also note that a Client PM's role should be separate from the architect, and other design and cost consultants employed on a project to ensure transparency and probity. Your proposal however has them working for the same organisation. There is a potential conflict of interest here.

The client will overview this separately. The role we have described provides for the necessary division of activities. In order to be as efficient as possible, we must get our contractors to do more. This doesn't impinge on the Council's ability to ensure probity and value for money.

62. Large capital projects require a significant amount of input from the Client (including; information gathering, procurement methodology, design decisions, stakeholder engagement, consultation, planning, tendering, evaluation, award, change control and payment). We do not see how one Client side officer could satisfactorily deliver all of this as well as all the other property functions stated.

The contract would require the contractor to undertake all of the roles that you have described with the quality assurance and necessary overview undertaken by the client. This structure is very similar to that employed in the Tri-Borough by Westminster City Council.

63. Capital projects are delivered by multi-disciplinary consultants, appointed by the Client side Project Manager following competitive tender. During Amey's presentation they confirmed they were unable to provide this through the framework. If these services cannot be provided through the framework, how can Amey be appointed to deliver them in a way that demonstrates compliance with the Council's Contract Procedure Rules? Consultancy Services are currently competitively tendered and value for money can be demonstrated.

To be covered following discussion with Amey.

64. In Colin Brand's email dated 21st December 2015 and in several meetings it was stated that that the Capital Projects Team would transfer on a "pass through basis". We have still not received clarification as to what this means despite repeated requests. There is no reference to this term under the Framework.

The budget that exists would be passed over to Amey, subject to further due diligence work.

65. Strategic Capital Projects are currently delivering 26 projects with a total budget value of £36.15m. These projects are for several council departments and many of the projects span over 2-3 years. We cannot see how these projects can continue to be managed and payments made to consultants and contractors if the PM is working for a consultant and not LB Bromley.

The management of £36.16m is overseen by the Capital Projects Team. This arrangement would continue under Amey.

66. There is no clear explanation how Education Capital Projects will be delivered in the future. It is our view that this should have formed part of the outsourcing review with Amey Communities Ltd.

The arrangements for Education Capital Projects would be delivered in the same way as now. The commissioning would be done by the Education client and delivered externally, as they currently are.

67. The 'Senior Property Manager' title on the draft Job Description is also called the 'Senior Project Manager' in Appendix 3.

Noted.

68. The 'Senior Property Manager' Job Description does not ask for an industry recognised Professional Qualification. If the council wishes to have an intelligent client function we would suggest this is introduced.

Noted.

69. For any construction work involving two contractors, the Council, as 'Client' has a legal obligation to comply with its obligations under the Construction Design and Management Regulations 2015. This responsibility cannot be delegated. We believe a single client officer will be unable to satisfactorily deliver all of this as well as the other property functions stated.

The arrangements with Amey and the client would cover any regulatory requirements.

70. Paragraph 2.2 states "Amey will deliver Capital Projects". This infers that Amey will also be the contractor, which is a conflict of interest if the proposal is for them also to be the client officer, and design consultant.

Noted, in the event that the contract is awarded to Amey, Amey will commission the delivery of capital projects.

71. The Commissioning Team in the recent consultation meeting with staff advised that no savings were being taken from Capital Projects. If a service benefit cannot be demonstrated either, then there appears to be no gain from outsourcing this small department.

The proposal from Amey delivers both financial and service benefits, including improvements in service, resilience and capacity. It also allows greater commercial expertise and speed in terms of procurement.

72. The Commissioning Team stated that the £60k 1FTE saving presented was taken from the resignation of the Head of Strategic Projects. This position is being fulfilled by the new 'TFM Principal Client' MG4 post however. We do not, therefore, see how this can be presented as a saving.

A £60k saving would be delivered across the overall contract. The client post (MG4) is not within these figures.

73. None of the officers delivering the current service have been asked to comment on the Amey submission or participate in the evaluation of any quality criteria. We express concern that the commissioning team have not engaged with any LBB Officers delivering the service or any other professional person in the review and evaluation of Amey's final bid.

Staff have been engaged in the process where possible. The extensive work carried out by the Tri-Borough has already established the credentials of the Service Provider.

Operational Property

SLAs

74. Confirm if Amey will be continuing to undertake LBB statutory repairing responsibilities to LBB remaining Schools. Confirm whether Amey will be continuing with our schools SLA service to both LBB Schools and Academies.

This responsibility will continue until such time as those schools convert to academies. Members will need to decide whether they want to continue to provide an SLA service for schools.

75. Will the planned school works for 16/17 proceed under Amey? Or will all the schools be Academy by April '16?

Where the Council continues to have a responsibility for schools, we would carry out any required works.

Property maintenance

76. Advise, given the significant backlog of building maintenance and ageing plant and equipment, how this is being dealt with under the contract with Amey. Will Amey still perform reactive maintenance on assets which have not been properly maintained by LBB historically? What if Amey identify a building and consider that it is not worth maintaining.

Similar to the current way, the process would consist of Amey assessing the maintenance to be performed and Members would make a decision about whether or not to carry out these works. Due diligence will be undertaken around surveying key properties and that will be reported back to Members which will help inform the future strategy for those buildings.

77. Amey/ C&W, as profit making companies, will be eager to make money and cannot be objective on repairing recommendations.

The client and the monitoring mechanisms set out in the actual contract would clearly set out how Amey/ C&W would be required to operate. The proposals from Amey will generate significant savings to the council over the contract term, based on the current specification.

78. What checking process will be in place to ensure maintenance has been carried out properly?

As with all contracts, the client team will be monitoring the overall performance of the Amey contract and proper monitoring arrangements will be in place.

79. Referring to Item 2.1 under Operational Property Asbestos management is shown as being provided by Public Protection.

Confirming that the individual concerned only undertakes resurveys, the procurement and administration of the contract is managed by Operational Property.

This has been noted.

80. Paragraph 2.1 of your document does not reference statutory compliance (other than asbestos) under Operational Property or Asset Management under Strategic Property. We presume these are oversights.

These are just generic headings, setting out the broad requirements. The specifications, signed off by Heads of Service, contain all the necessary requirements, including statutory compliance and this is covered in the contract.

81. Paragraph 2.5 references a minor works programme in the sum of £806K. The recent Executive Report on the repairs and maintenance budgets does not correlate to the figures or budget head presented in your document.

Comment noted. The £806k doesn't relate to the minor works programme. It should have said Operational Property/ FM budgets.

82. Paragraph 2.6 refers to the removal of the need to competitively tender. Does this mean that Amey have a competitively tendered supply chain to fully deliver planned maintenance works, and indeed a full supply chain for reactive and cyclical maintenance too?

The Framework allows us to avoid the need for competitive tendering. In due diligence, we would establish the appropriate arrangements for establishing these activities. The Framework also provides an overview from the Tri-Borough client.

Strategic Property

83. What upskilling will be provided by C&W? What further information will have to be provided to C&W?

This would be covered as part of further TUPE consultation and due diligence.

Facilities and Support Services

84. Artwork – This is currently held in a format that can only be accessed with Apple computers. Would this equipment transfer to Amey so that the artwork is still available to Bromley or will this service cease?

The artwork would transfer to Amey.

85. Car Parking – There is no mention of the management of Staff Car Parking. Will this operational service transfer to Amey?

Yes, the specification required of Amey will be the same as the scope of services now.

Mail Room

86. Who will take over responsibility for sourcing the licenses and providing the envelopes for the Response Paid service?

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

87. What will happen to the Members' pigeon holes? Is it appropriate for commercially sensitive information (i.e. Part 2 Reports) to be left in a contractor managed environment?

Amey would have a contractual duty of confidentiality.

88. Will we still be able to take advantage of the currently achieved savings by using the PPI rates given to Local Authorities?

Yes.

89. How will Liberata's post that goes through the current Post Room be managed?

The specification required of Amey would be the same as the scope of services now.

90. What will happen when the current Franking Machine leases expire at end March 2017?

Subject to Member agreement to the Proposal, this would be Amey's responsibility to act on.

Printing

91. What are the plans for printing that needs to be undertaken by external printers (e.g., specialist printing or large volumes)? Do they have a similar facility to the Essex Framework Agreement we currently use with CDS?

Amey would have to provide the service in a process agreed with the client. It is envisaged that there would be similar quotation and tender processes to those used by the Council but this will be looked at further during due diligence.

92. Will currently centrally held budgets for Paper & Copiers continue or will each department be given their own budgets back?

No, each department would not be given individual budgets.

93. What will happen when the current Copier leases expire in November '16 and February '17?

Amey would need to continue to fulfil LBB requirement but it would be Amey's responsibility to find a way to provide this.

Paper Supplies

94. Will we still be responsible for the centralised purchase and distribution of paper supplies for the Civic Centre and our Satellite sites?

Yes, the specification required of Amey will be the same as the scope of services now.

95. Will we still be able to take advantage of the cheaper prices we have as a Local Authority or do they have their own suppliers? Will Amey apply an extra charge for this if they have to purchase the paper and recharge Bromley?

Yes, Amey would be able to use our Framework. The contract is a fixed price for the scope of services currently provided. This process will be looked at further during due diligence.

TNT

96. There is no mention of the management of the TNT Archive service we currently provide. Will this be put out to Departments to do themselves?

This would be covered as part of due diligence.

Ad Hoc Ordering

97. We currently order all stationery for the Coroner's Office through Office Depot and recharge them. Will this continue with the service when it transfers to Amey?

No, this would not continue.

Events

98. We generally work over 12 hours when we support various corporate, Mayoral, Civic events including Elections. Will Amey be prepared to continue with existing arrangements and will additional duty costs be assigned to the requesting client?

The scope of work required of Amey/ C&W would be the same as required of in house teams now.