

Slough Borough Council

Report To:	Cabinet
Date:	19 th December 2022
Subject:	Corporate Assets Facilities Management Services
Chief Officer:	Pat Hayes
Contact Officer:	Kamal Lallian
Ward(s):	All
Portfolio:	Cllr Sabia Akram, Leisure, Culture & Community Empowerment
Exempt:	NO
Key Decision:	Yes because it is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the facilities management services
Decision Subject to Call In	Yes
Appendices:	None

1. Summary and Recommendations

- 1.1 Bouygues E&S Solutions Ltd, (Bouygues) the Council's facilities management contractor has for some time been in dispute with the Council over the extension of their contract, which they did not want, and had triggered the contractual adjudication process to terminate the contract on grounds of non-payment of invoices.
- 1.2 The view was taken that instead of contesting the potentially expensive and resource intensive adjudication proceedings with no guarantee of a good outcome for the Council, it was best to end the contract by mutual agreement rather than risk continuing to have an unwilling and uncooperative contractor in place with the likelihood of further disputes at a time when significant savings and services reconfiguration are required from the contract.
- 1.3 An agreed termination with three months' notice, allowing just sufficient time to put alternative arrangements in place was implemented.
- 1.4 Consequently, the report seeks approval to implement a replacement model to deliver facilities management (FM) services across corporate buildings, offering better financial control and improved service quality through a mixture of direct staff employment and direct contracting rather than purchasing an umbrella service.

Recommendations:

Cabinet is recommended to:

- a) Note the report and the savings required in 2023/24 against FM budgets.
- b) Approve the recommended service delivery model to transition from an external service provider to a new mixed in-house and contracted out model.
- c) Delegate authority to the Executive Director of Housing & Property in consultation with the lead member for Leisure, Culture & Community Empowerment to:
 - (i) Decommission the Bouygues contract including transfer of staff back to the Council where required.
 - (ii) Procure and award contracts to specialist contractors (e.g., lifts, air conditioning) ensuring that local, SME and other suppliers have the opportunity to compete.

Reason:

- Our current service provider, Bouygues has been delivering services to Slough since 2017. They have wanted to exit the contract for some time and objected to the Council unilaterally deciding to extend the contract, and eventually sought release from the contract through adjudication proceedings for late payment of an invoice by the Council. Legal advice was that there was no guarantee of a good outcome for the Council from the adjudication process.
- As the Council down sizes its operational estate and reduces costs to restore its financial position it needs to make savings from its facilities management functions reducing specifications and getting greater value for money. This is easier to do outside the existing historic contract

Commissioner Review

The Commissioners support the recommendation for Option 1 set out in this report. It is important that there is appropriate oversight of the process given the tight timescale to deliver the TUPE transfer and ensure alternative contracts are in place where needed, and risks are managed.

2. Report:

- 2.1 Bouygues have been delivering FM services to the council since 1st December 2017. The contract with Bouygues was awarded on a 4+1+1+1 year basis. A formal letter was sent to Bouygues on 31st August 2022 confirming the extension of the contract from 1st December 2022 – 30th November 2023. This was the second extension for the contract taking it to year 6 of a maximum 7 year period.
- 2.2 Bouygues had stated their intention to terminate the contract and prevent a further extension, claiming the contract was being frustrated due to changes the council was making to reduce its costs and that they were running the contract at a loss. The issuing of the contract extension triggered Bouygues to issue an adjudication notice using the failure to pay a specific invoice within agreed timescales as a breach of contract.

- 2.3 The council has considered its position and that of Bouygues and whilst prepared to contest the claim, was faced with a worst case scenario of Bouygues winning the adjudication and being able to terminate immediately and a best case one of being left with an unwilling and uncooperative contractor wanting to end the contract. It was therefore decided that the best course was to agree a mutual termination rather than expend considerable monies fighting the claim.
- 2.4 The agreed termination allows three months to put alternative arrangements in place with the fall-back option that Bouygues could be kept on, albeit at a cost, if required for a short period after this.
- 2.5 £500k of savings need to be made in the management of Council operational assets, against a backdrop of the asset disposal programme and budget reductions. These savings will be hard to achieve under the current contract with an uncooperative contractor unwilling to accept reductions in scope and specification of the contract.
- 2.6 The current contract involves Bouygues directly employing some staff and subcontracting other functions out to specialist trade contractors. It is felt that in terms of scaling down costs this is more easily done if the Council has direct control over the core functions like cleaning where it can scale down the scope and specification of services which Bouygues have no incentive to do and that it will get better value from directly procuring specialist services as there will be no main contractor margin.
- 2.7 Preparations have now begun in earnest to demobilise Bouygues and put in place new arrangements. The timescale is tight but the contractor is cooperating in terms of providing lists of staff information and equipment.
- 2.8 A project team including the Council's legal, procurement, HR and finance teams has been put in place to manage this process.
- 2.9 The preferred approach will involve transferring a number of Bouygues staff into Council employment. The costs of so doing can be met from existing budget. The transferred staff will have the benefit of becoming Council employees while the Council will be able to directly manage their performance.
- 2.10 The preferred approach will also involve purchasing existing stores and some other equipment from Bouygues, which will be more cost effective than buying new stock or equipment

Options considered

- 2.11 A number of options have been considered in respect of ways to replace the existing contractor. The following services need to be provided.
 - Reactive Repairs
 - Preventative Planned Maintenance
 - Compliance Tasks
 - Cleaning / Housekeeping Services
 - Project- EWTC's (Extra Works to Contract)
 - Capital Works

- Emergency site attendance - normal working hours
- Out of hours Emergency Call Outs

2.12 Option 1 –Some In-house Service Delivery Procuring Specialist Services on Term Contracts

On the agreed date, Bouygues staff would transfer to the council or replacement contractors under TUPE. Services provided by Bouygues sub-contractors will be procured on a longer-term basis under term contracts of a duration in line with norms.

Pros	Cons
Terminate the contract with Bouygues and start the process of a self-delivery model, offering best value for delivered services across the council estate.	Management set-up costs of the service in the initial stages – will include transport, ITC, staff uniforms, equipment and stock items etc
Strategic alignment in that this provides extensive flexibility to the Council in terms of operations. Total financial and management control of all aspects of FM services.	TUPE costs – © 40 staff currently on the TUPE list. Potential redundancies
Savings against reactive works, by way of no additional mark ups from contractors, we would own and manage the technical team and specialist contractors directly.	Contract management costs
Not having an additional mark up on invoices regarding quoted works.	
Savings Targets for 23/24 of © £500k can be achieved.	If the asset disposal programme is delayed the opportunity to make all the savings could be difficult.
Ongoing savings by reducing markups from the intermediary (CPI & material-labour uplifts) currently applied by Bouygues.	
Engaging contractors that solely quote and invoice directly to the council.	
Delivering in-house services can and will be beneficial for the council longer term as offices/buildings are working differently, we need to be flexible and have the ability to adapt quickly to change as the asset disposal programme is implemented.	Being able to embrace change could be very difficult, as not having full control of the delivered services will hold us back.

2.13 Option 2 – In-house Service Delivery Model Procuring Specialist Services on Spot

On the agreed date, Bouygues staff would transfer to the council or replacement contractors under TUPE. Services provided by Bouygues sub-contractors would not be procured on a long-term basis and short-term spot orders would be placed as necessary.

Pros	Cons
Terminate the contract with Bouygues and start the process of a self-delivery model, offering best value for delivered services across the council estate.	Management set-up costs of the service in the initial stages – will include transport, ITC, staff uniforms, equipment and stock items.
Strategic alignment in that this provides flexibility to the Council in terms of operations.	
Financial and management control of all aspects of FM services	This may be a huge challenge as not having a contract in place with service partners and purchasing on the spot repairs, may leave SBC open to high costs and no/much reduced savings on the delivered services.
The majority of services would return to the council under TUPE.	TUPE costs – © 40 staff currently on the TUPE list.
Opportunity to seek savings against the current PPM and reactive works, carried out by specialist contractors.	Significant risks in that the council would no longer have term contracts for key building operations. e.g. lift maintenance and air conditioning meaning that the council may not be able to operate in the event of building failure.
Flexible services that may be varied as asset disposal programme is implemented.	The council will face increased costs from the management of the on-spot service and additional time required to negotiate and purchase services.
Some savings will be achieved by reducing markups from the intermediary (CPI & material-labour uplifts) currently applied by Bouygues.	Savings Targets for 23/24 of © £500k unlikely to be achieved and also dependent on asset disposal programme.
Contractors can be varied as and when required.	Piecemeal procurement of services is highly intensive with variable costs and additional management resource requirements.
	Additional management/administration would need to be assigned to the day to day running of spot purchase contracts.
	Heavily dependent on the council being able to obtain suitable staff to manage the services in-house and

	operating the network of specialist suppliers without unacceptable service risk.
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2.14 Option 3 – Appoint a Replacement FM Contractor for a Short-Term Period i.e. the remainder of the term

On the agreed date, Bouygues staff would transfer to a new contractor under TUPE, with specialist services being performed by the new contractors' network. This option could be further split with some 'soft' FM services, i.e. those services relating to the usage of the building such as cleaning and security, becoming the responsibility of the council with only 'hard' FM services i.e. those services relating to the physical aspects of buildings such as electrical, lifts, air conditioning going to a specialist contractor. The contract would be for a short period of no more than one year to allow the council to review its strategy aligned to the asset disposal programme.

Pros	Cons
Terminate the contract with Bouygues and start the process of a finding a contractor to offer a short-term contract.	It could be costly and difficult to secure a contractor for the remainder of the contract term.
Looking for best value.	This will be a challenge in arranging a contract to cover the short fall of time till the end of the original contract.
Service Delivery costs.	We need to secure good quality contracts with the additional benefit of value which would be difficult using this option of a short-term partner.
Working with the Service Partner.	The additional set-up cost for the council to engage a new service partner on a short-term basis would not be beneficial as time is needed to move over the IT information and interface as well as the costs involved.
TUPE would be managed by the new provider.	The costs to a supplier of establishing a new contract of this nature would be prohibitive for a short-term arrangement.
This option is short-term and does not provide strategic alignment to the council's long-term plans and best value.	The council is unlikely to see any short-term economic benefit from this approach.
	For suppliers to be interested in a short-term piece of work, the incentivisation would need to be sufficiently high. Given the current financial position of the council, this is deemed as unlikely to be appropriate and would not deliver best value.

	Savings Targets for 23/24 of © £500k will not be achieved
	Less financial and management control of all aspects of FM services
	Less flexibility to vary services as asset disposal programme is implemented.

2.15 Option 4 – Appoint a Replacement FM Contract for a Longer-Term Period

On the agreed date, Bouygues staff would transfer to a new contractor under TUPE, with specialist services being performed by the new contractors’ network. This option could be further split with “soft” FM services, i.e. those services relating to the usage of the building such as cleaning and security, becoming the responsibility of the council with only ‘hard’ FM services i.e. those services relating to the physical aspects of buildings such as electrical, lifts, air conditioning going to a specialist contractor going to a specialist contractor. The contract would be for a longer period to allow for market interest.

Pros	Cons
Terminate the contract with Bouygues and start the process of a finding a contractor to offer a new long-term contract.	The cost to engage another long-term contractor, would put us back in the situation we currently have.
Looking for best value against a contract cost.	To offer the contract to be retendered again would give the council a large financial strain.
Contract costs and service delivery costs would be agreed upfront	The council would be open to additional inflated costs against the contract over the period of the agreed time.
Working with a single service partner.	To enable all the council’s new working processes and the implementation of the asset disposal programme, we need to remain flexible with our service partners and entering into a contract would not offer the malleability the council needs moving forward.
Commercially viable only if suppliers give appropriate consideration for the reducing asset base of the council and therefore reduced services and profits and consequently overheads and staffing levels.	Does not provide strategic alignment and would make reducing the cost of FM services more difficult as the assets are reduced.
The council is likely to be able to support such a transition given the single supplier, single transition process.	The council is unlikely to see any economic benefit from this approach.
TUPE would be managed by the new provider(s)	Savings Targets for 23/24 of © £500k will not be achieved as costs will broadly be the same if not more and will increase with inflation.

Recommendation

1.1 It is recommended that Cabinet approve **Option 1 – In-house Service Delivery Model Procuring Specialist Services on Term Contracts.**

The council is currently undergoing a restructure of service delivery across all directorates and is redefining its operating model. This provides a good opportunity to create a dedicated council building management team to provide managed services across the whole Council estate in a way that maximises saving from shared use of buildings etc.

The team will;

- Take ownership of cost, add value and challenge where needed.
- Use expertise to manage performance and delivery of quality services.
- Look at every step involved in delivering a new operating model, always looking to explore new options and include new opportunities in the services we provide.
- Be accountable to senior management and Members.
- Procure and seek to deliver best value services
- Future proof the service delivered
- Build and develop on current skills with ambition to deliver more in-house cost-effective services.
- Offer training to upskill the current team and build resilience.
- Work with the private and public sectors to offer a leaner service.
- Utilise and incorporate the good quality service partners we already engage and work with around the borough.

- 1.1 As the Council currently have a number of buildings which are earmarked for disposal the new model of delivery offers greater flexibility to down size requirements and reduce specifications.

3. Implications of the Recommendation

3.1 Financial implications

- 3.1.1 The current spend against the Bouygues contract across all council departments and directorates is circa £1.8m. The Building Management budget is £1.3m. In total savings of £500k are expected from these budgets in 2023/24 which will be delivered via the new service delivery model incorporating the asset disposal programme and accommodation plan.

The new service model can be delivered within the available budget with appropriate reductions to reflect current building occupation and usage. Market testing has been undertaken for a like for like service which has identified only a marginal saving of less than £100. Market testing with specialist suppliers has shown we make can achieve significant savings if we procure services directly

avoiding third party management fees. For example, soft market testing identified savings of between £35k to £15k for provision of annual gas boiler servicing if we were to directly procure.

Funding will be required to purchase stores and equipment this will be found from the existing budget.

3.2 Legal implications

3.2.1 Advice from HB Public Law regarding the adjudication process was that there was no guarantee of a good outcome for the Council in the proceedings. Further legal advice was provided on contract termination leading to a joint decision to terminate the contract on 28th February 2023, and to work with Bouygues to:

- a) Agree a demobilisation plan and remobilisation through mutual agreement
- b) Agree TUPE list and finalised list of staff transfer
- c) Handover of complete database and revised asset register

3.2.2 The contract provisions continue to apply up until the termination date and so the Council can rely on these provisions to achieve a smooth exit from the contract.

3.2.3 The Council must comply with The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) TUPE with regard to any Bouygues employees or workers transferring their employment to the Council. HB Public Law will work with HR and the project team to ensure compliance.

3.2.4 All procurement must be done in compliance with The Public Contracts Regulations 2015 (PCR) and the Council's Contract Procedure Rules. The PCR do not apply to the insourcing of services to the Council"

3.3 Risk management implications

3.3.1

Risk	Mitigating action	Opportunities	R/Level
Bouygues exit the contract earlier than expected, leaving the council to arrange building PPMs, reactive compliance & quoted works to cover outstanding requirements across the estate.	<ul style="list-style-type: none"> • Develop a planned exit strategy with Bouygues • Use the SBC team & a small number of TUPE'd staff to enhance the services required. • Use specialist SMEs to provide quality & financial savings. 	<ul style="list-style-type: none"> • To deliver cost effective services across the estate. • Add value to estate • Take ownership of the contract delivery challenges • Work with other SBC departments towards reducing energy costs. • Work with the Asset Disposal Team for smoother transition towards, leasing & building sales. 	Medium

H&S – the council are left with a large amount of outstanding uncompleted compliance, H & S tasks across the estate.	<ul style="list-style-type: none"> Take ownership of the works required and during demobilisation plan how these are completed and managed 		Low
H& S – the council is challenged by H & S incident at a non-compliant site within the borough.	<ul style="list-style-type: none"> Work with Bouygues and ensure all compliance and mandatory works are monitored daily and weekly 		Low
Self-Delivery Model - If approval is not given, it would lessen opportunity to deliver quality services and deliver savings.	<ul style="list-style-type: none"> Report detailing options considered and the most effective opportunity offered 		Low
Legislative Changes - unknown/unquantified legislative changes which may have a negative impact on the objectives e.g., H & S directives & new legal regulations.	<ul style="list-style-type: none"> Keep up to date with key legislation and ensure that any proposed changes are taken into consideration and worked into the appropriate plans. 	<ul style="list-style-type: none"> Review what we have previously been informed by the incumbent contractor to verify the requirement. 	Low
Legal Risk of challenge to the outcome of the procurement process.	<ul style="list-style-type: none"> A verification exercise of the evaluation of requested services & delivery process to mitigate the risk of challenge from any unsuccessful bidders Comply with the Public Contracts Regulations 2015 	<ul style="list-style-type: none"> Find quality Service Partners, work together to drive forward the contract expectations. 	Low
Mobilisation - backlog of work which may arise throughout the existing contractor's termination & exit period. They may be less motivated in the completions. The impact could be felt in the council's operations team and on the mobilisation of the new structure/model.	<p>Agree an exit timeline including:</p> <ul style="list-style-type: none"> close engagement with existing provider close management of works including timely reporting enforcement of payment mechanism 		Medium

3.4 Environmental implications

- 3.4.1 Developing a new self-delivery model offers the opportunity of a new vision on how we would deliver services across the borough. The future delivery model is a much leaner service incorporating planned service delivery avoiding multiple visits to the same site with skilled officers delivering numerous planned tasks whilst onsite.
- 3.4.2 This will be the new way of working and delivering services to reduce energy consumption and carbon emissions. The asset disposal programme will reduce the councils carbon emissions over a period of time, this can be quantified through energy and carbon audits. Our internal delivery plan will focus on reducing fuel usage and where upgrading is required look towards technology for greener solutions.
- 3.4.3 Environmental benefits can be specified in contracts to be procured.

3.5 Equality implications

- 3.5.1 The Equality Act 2010 and Council policies will be adhered to in demobilising the existing contract and transferring staff to the Council. Transferring staff into Council employment should have a positive benefit for staff.

3.6 Procurement implications

- 3.6.1 All procurement projects will consider the best procurement option and procurement route. This will ensure that best value is demonstrated in each procurement undertaken and the Procurement Team will be part of the project team to mobilise the new service delivery model.
- 3.6.2 A business case for each procurement project will be developed which will consider the most appropriate procurement route according to the council's contract procedure rules, UK Procurement regulations and will need to follow public procurement principles of value for money, equality of treatment, transparency, proportionality.

3.7 Workforce implications

- 3.7.1 TUPE regulations will be adhered to incorporating the council's HR policies and HR will be part of the project team to demobilise the contract and will support the staff consultation to develop the new in-house service delivery structure.

3.8 Property implications

- 3.8.1 We will work with the Property Service to help deliver savings to compliment the Asset Disposal Programme.

4. Recommendation

- 4.1 Option 1 is recommended as the new in-house service delivery model with procurement of specialist services on term contracts. This option has the best alignment to deliver best value services and greatest control and flexibility to deliver and manage FM services. The model offers flexibility and savings that are aligned to the asset disposal programme, accommodation plans and efficiencies required going forward.
- 4.2 In addition, this model will minimise immediate service risk and will be commercially viable with the market able to respond to term service contracts in sufficient time to manage key delivery risks

5. Background Papers

None