



City of Westminster

# Cabinet Member Report

<b>Decision Maker:</b>	Cabinet Member for Finance, Property and Corporate Services
<b>Date:</b>	14 <sup>th</sup> March 2018
<b>Classification:</b>	For General Release, Appendix B is exempt from disclosure
<b>Title:</b>	Restructure of Facilities Management Service
<b>Wards Affected:</b>	All Wards
<b>Key Decision:</b>	Cabinet Member approval sought for restructure of Facilities Management Service. Included in the Forward Plan of Key Decisions
<b>Financial Summary:</b>	<p>The new Facilities Management structure will create an initial indicative estimated £1.3m a year revenue budget pressure. It has not been possible at this stage to cost the proposed changes to the degree necessary to provide secure costed estimates. It will be necessary to arrange financing of the final additional cost which will come from a virement in the 2018/19 budget with the recurrent cost for 2019/20 being dealt with as part of the 2019/20 budget setting process. This will impact on the level of savings the Council will need to achieve in 2019/20. The financing of this additional cost will also take account of settlement income received from Amey Community Limited for the early termination of the contract.</p>
<b>Report of:</b>	Guy Slocombe, Director of Property, Investment & Estates

## **1. Executive Summary**

1.1. This report seeks Cabinet Member approval for the implementation of the transformation of Facilities Management (FM) services for the Council's corporate estate. This requires the early termination of the Total Facilities Management (TFM) Project Agreement and for the Council's Facilities Management Mobilisation team to arrange the supply of replacement FM services through a mixture of in-house and external procured resources.

1.2. The aspects of this approval are:

- 1) Termination of the existing TFM Project Agreement with Amey Community Limited
- 2) Dissolution of the existing LINK tri-borough facilities management team to form a new sovereign based, Council specific facilities services function, remaining within Corporate Property for the time being
- 3) Establish a new blended in-house and outsourced delivery model to provide direct control of FM service delivery and customer facing services along with third party FM service delivery
- 4) Procurement of a new suite of service contracts to meet the requirements of the new FM delivery model.

## **2. Background, including Policy Context**

2.1. In January 2012 Cabinet agreed to a single supplier tri-borough Total Facilities Management (TFM) solution involving WCC, LBHF & RBKC to cope with reduced funding and the need of all boroughs to make financial savings. A ten-year TFM Project Agreement was awarded to Amey Community Limited through the Competitive Dialogue procedure. This enabled the complex contracting arrangements required to be aligned in the best interests of each sovereign borough.

2.2. From its start in October 2013 the aim was to align the delivery of FM services across the three boroughs and through this drive efficiencies, enable economies of scale and ensure the assets and services of each borough, as a minimum, complied with statutory obligations.

2.3. In parallel with the procurement a new in-house client team (based at RBKC) called LINK was set up to manage the TFM Project Agreement on behalf of the three boroughs. This client team is responsible for managing performance and contract compliance.

2.4. The TFM Project Agreement transferred budget and risk from the Council's to the incumbent supplier. The FM services supplied through the TFM agreement include:

- Hard FM services
- Cleaning (including windows), confidential waste disposal & pest control
- Catering & hospitality
- Landscaping & grounds maintenance
- Mailroom, reprographics, portorage, archival and stores management
- Reception and Front of House
- Security Services
- Management & Helpdesk
- Capital works values below £250K

2.5. The quality of FM service supplied to the Council is extremely important. The services must be performed in a way that ensures each Council's assets and services meet the operational demands to provide excellent customer service.

2.6. As a result of ongoing strong contract management by the Council and following frequent challenge sessions with the supplier, it is agreed between the three boroughs and Amey that the standards required under the existing arrangements cannot be fully delivered.

2.7. Regular quarterly meetings have been held with the supplier and the Property Directors of each borough since inception of the contract. Various service delivery boards report to these meetings to ensure full delivery of the service.

2.8. Matters of consistent underperformance were escalated to the CEOs in 2016 following which further challenge sessions with the CEO of RBKC took place before it was agreed by all parties that the agreement should be terminated in advance of full term and the Councils should establish new models of FM delivery.

2.9. The most expedient and cost-effective approach to terminate the TFM Agreement early is a mutually agreed, negotiated termination as currently proposed by RBKC, WCC, and Amey representatives. It should be noted that the proposal is still subject to reaching an agreeable position with LBHF through the preferred route of co-operation and collaboration. However, if this cannot be achieved for any reason then the alternative options will be limited to some form of on-going operation of the TFM Agreement or the service of a formal termination notice which may be disputed by the supplier. Dialogue between the Chief Executives of each Borough and their respective teams continues with the preferred outcome still remaining some form of early termination.

### 3. Recommendations

- 3.1. That Appendix B of this report be exempt from disclosure by virtue of the Local Government Act 1972 Schedule 12A, Part 1, Paragraph 3 (as amended), in that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 3.2. Following a full review of the tri-borough Total Facilities Management (TFM) Project Agreement (i.e. the contract) the Cabinet Member is asked to agree these proposed changes to the current FM service model.
- 3.3. To delegate authority to the Director of Corporate Services to conclude negotiations with Amey on terms recommended by the Council's professional advisors in accordance with the Heads of Terms and agree any necessary variations to the Heads of Terms or contract which are in the Council's best interests and necessary to complete the negotiations and determination of the existing contract.
- 3.4. That authority be delegated to the Director for of Corporate Services and the Director of Property, Investment and Estates to incur the costs of professional fees associated with the exit from the contract.
- 3.5. That authority be delegated to the Director of Corporate Services and the Director of Property, Investment and Estates to establish a new FM delivery function to delegate authority to the Director of Corporate Services and the Director of Property, Investment and Estates to change the FM service model from the single Total Facilities Management (TFM) Project Agreement that governs the supply of FM services to the three boroughs, to a sovereign performance focused multi-supplier model comprising a combination of in-house and external supplied services with a more direct influence on compliance, performance and direct customer engagement, and to procure and award new contracts to fulfil the requirements of the new FM delivery model through a number of competitively tendered contracts governed by existing framework agreements
- 3.6. To delegate authority to the Director of Property, Investment & Estates in consultation with the Director of People Services and the City Treasurer to establish a new in-house Facilities Management team while also cogniscent of the influence of TUPE on this process.
- 3.7. To delegate authority to the Director of Property, Investment and Estates to approve mobilisation and transition costs to support the transformation in consultation with the City Treasurer.
- 3.8. To approve that the revenue budget consequences in 2018/19 be approved by a virement as agreed by the City Treasurer and the Executive Director for Growth, Planning and Housing, that that the revenue consequences for 2019/20 be dealt with as part of the 2019/20 budget setting process and that the income received

from Amey Community Homes be placed in a reserve to be utilised as needed to finance any short term financing issues.

#### **4. Reasons for Decision**

- 4.1. The recommendations are to enable the TFM Project Agreement to terminate early by mutual agreement and to arrange the supply of replacement FM services through a mixture of in-house and externally procured services.
- 4.2. This recommendation represents the best approach to reasonably obtain appropriate FM services in the most cost effective and timely manner.
- 4.3. The recommendations enable continued strong contract management via more nimble and service specific contracts.
- 4.4. The recommendations provide for the Council to monitor and manage health and safety compliance more effectively and to be more closely involved with this function.
- 4.5. The recommendations ensure an effective, efficient and well-maintained corporate estate which properly supports the Council's delivery of services and offers the most economically advantageous combination of cost and function.
- 4.6. This enable the Council to meet its City for All obligation and its service transformation Routemap to Success targets by providing an efficient corporate estate.

#### **5. Proposal and Issues**

- 5.1. The overarching proposal is to move to sovereign provision of relevant FM services under an internal management with a multi-vendor, multi-sourcing model as soon as practically possible. This will be delivered by in-sourcing of a range of services, and the re-tendering of specialist services to third party providers, effectively moving away from the single large-scale outsourcing arrangement currently in place via the TFM Project Agreement.
- 5.2. The proposal is to manage all aspects of an early termination by mutual agreement and to transition to the new model includes:
  - a) Ensuring the FM Team has sufficient technical and contract management expertise to achieve best value-for-money through the new FM service model
  - b) Supplying or managing the supply of some Soft FM services with a combination of current in-house resources and new hires. It is recognised that a number of

Amey Community Limited and their sub contracted supply chain employees may be eligible to transfer under the TUPE Regulations

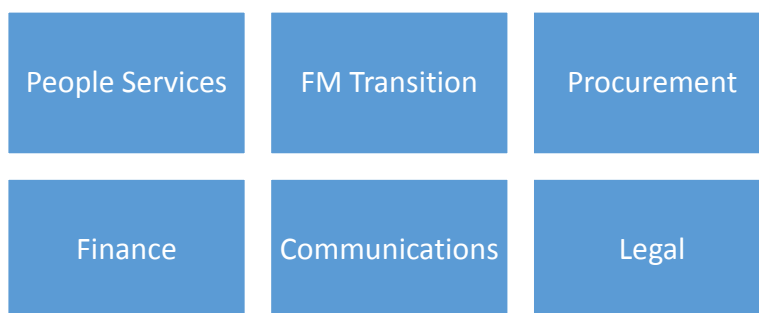
- c) Procuring a number of FM services, currently supplied via the TFM Agreement, through further competitive tendering under various framework agreements that are available to the Council.
- d) Contracts with the successful suppliers from the above competitive tender process are anticipated for:
  - 1) Hard Facilities Management services (Mechanical & Electrical services)
  - 2) Soft Facilities Management services (Cleaning & Security)
  - 3) Building Fabric services
  - 4) Asbestos Surveys
  - 5) Asbestos Removal/Management
  - 6) Grounds Maintenance
  - 7) Lifts (servicing, maintenance & repair)
  - 8) Software (to support FM operations)
- e) Pending a Legal and Procurement review of contracts, the council proposes to novate various services into other existing council contracts. For example, the Grounds Maintenance provision is proposed to novate to the Councils Parks and Open Spaces Grounds Maintenance contract with Continental Landscapes.

5.3. The timeline below is the current forecast to achieve transition to a new FM function and procured suppliers.

- **February;** service transition team established and the formulation of tender packages commenced.
- **March;** ongoing discussion and information sharing with the incumbent supplier, liaison with Services on revised specification requirements, invitations to tender to be sent to potential suppliers to bid to supply FM services
- **April;** evaluation of tenders/presentations, approval of recommendations
- **May;** award contracts, transfer of services to FM Team begins.
- **June to October;** remaining transfer of services, phased supply of FM services through contracts awarded to suppliers' party to framework agreements

## 6. Mobilisation and Transition Programme

- 6.1. A Facilities Management Mobilisation programme team has been established resourced by officers from across the Council to; manage the re- procurement of the FM suppliers, establish a new in house FM team (Appendix 1), manage the TUPE of Amey/Link staff and oversee the transition to new service providers.
- 6.2. The programme consists of a number of work streams as below. Each work stream has a lead officer and an agreed scope of work. The work stream lead is responsible for planning, monitoring and managing their work stream and will be tracking progress against their plan and risks/issues through the Facilities Management Mobilisation and Transition programme board. It is expected that as the programme progresses further work streams will emerge.



## 7. Facilities Management Delivery: Options and Analysis

- 7.1. The mobilisation team has considered a range of service delivery options to meet the Council's future requirements for FM service delivery which are summarised below and dealt with in more detail under Section 8.
- 7.2. Option 1 - Retain the existing TFM Agreement and continue to work with Amey Community Limited to obtain the desired service delivery –**
- 7.2.1.** The Council has identified areas of consistent underperformance which have not improved and, following consultation with the supplier, it is believed cannot be delivered under the current agreement.
- 7.2.2.** This option is discounted as the operational model does not allow the council to have the necessary close engagement with building users, end customers and community engagement.
- 7.3. Option 2 - To exit the existing TFM Agreement and implement an alternative service delivery model.** Three alternative solutions have been considered to achieve this:

- 1) **out-source**; procure another single supplier TFM service
- 2) **in-source**; supply all FM services through employed resources
- 3) **blend of in-source and out-source**; supply some services through employed resources and procure the rest from a mix of more specialist suppliers

7.4. The **out-sourced** option is **discounted** because as referred to above, it would not address the required direct contact with building users, customers and community engagement. Importantly, the original business case for the TFM agreement would only achieve best value-for-money if the three Councils jointly awarded a contract for the total operational estate. Therefore, a TFM service for one Council would fail to achieve value-for-money. The experience of Council officers is that the out-sourced option has failed to provide a quality TFM service.

7.5. The second option to **in-source** is **discounted** as, while some of the required hands-on expertise could transfer to the Council from the incumbent supplier, this would not be sufficient. Equally it would, for the supply of some services, be uneconomic for the Council to employ what is often specialist expertise e.g. asbestos inspection, given the low frequency use and specialisms required.

7.6. The third option, a **blend of in-source and out-source** is recommended. The FM Team could add sufficient breadth and depth of FM expertise to supply some services and manage the supply of the remainder through competitively tendered contracts awarded to a range of suppliers. This option would enable the FM Team to have a more direct influence on each supplier's performance to improve service quality and consistency, which would greatly reduce the risk of assets and services not meeting requirements of statutory compliance.

7.7. The service supply proposed from the in-sourced FM Team are:

- 1) Reception and Front of House
- 2) Management & Helpdesk
- 3) Mailroom, reprographics, portorage, archival and stores management

7.8. Contracts for specific other services, such as catering, Grounds Maintenance and Mailroom services are proposed to be novated to existing Council contracts at this stage.

7.9. The service supply proposed through competitively tendered contracts are:

- 1) Hard Facilities Management services (Mechanical & Electrical services)
- 2) Soft Facilities Management services (Cleaning & Security)
- 3) Building Fabric services
- 4) Asbestos Surveys



- 5) Asbestos Removal/Management
- 6) Lifts (servicing, maintenance & repair)
- 7) Software (to support FM operations)
- 8) Provision of capital works value not to exceed £10K

## 8. Procurement

8.1. **Procurement Approach** - The Council can procure outsourced FM services via the following routes:

- Public sector framework agreements
- Council specific procurements

8.2. The first option has two distinct advantages over the second, given the prevailing context and circumstances, and they are:

- **time**; currently time is of the essence, the very nature of public sector framework agreements is that they have been awarded in compliance with UK Public Contracts Regulations 2015 and are therefore ready for public sector organisations to use without the requirement to issue a lengthy procurement tender. A procurement process typically requires at least 6 months to complete depending on the nature and complexity of the service requirements.
- **limited distraction**; the suppliers party to the public sector framework agreements have already demonstrated that they have sufficient experience and technical expertise to supply the relevant services, to qualify for inclusion on the relevant framework agreement so this helps mitigate risk.

8.3. In other important respects, given the prevailing context and circumstances, utilising existing public sector framework agreements has numerous other beneficial characteristics including:

- a) **competition**; both options encourage competition amongst potential suppliers. However, the public sector framework route enables the Council to invite potential suppliers with proven experience and expertise, by virtue of their inclusion on a relevant public sector framework agreement, to compete by tender without the need for Westminster to complete a full qualification evaluation;
- b) **specification**; both the public sector framework and council specific procurement routes enable the Council to specify, without undue restriction, whatever is needed to satisfy demand.

8.4. Public sector framework agreements are the product of a Public Contracts Regulations compliant procurement exercise generally carried out by a central

purchasing organisation. Framework agreements provide agreed terms under which eligible contracting organisations can award contracts for specific services.

8.5. The alternatives to public sector framework agreements for the supply of the Facilities Management service bundles, are not all suitable and include:

<p><b>Use in-house resources to supply all Facilities Management services.</b></p>	<ul style="list-style-type: none"> <li>• Insufficient expertise; difficult to acquire in time.</li> <li>• Lack sufficient capacity, even after relevant transfers from the incumbent supplier and their subcontractors under the TUPE; difficult to acquire in time.</li> <li>• Even if the Council could acquire sufficient expertise and capacity, the nature and low frequency of some services mean this would not achieve value-for-money.</li> </ul>
<p><b>Replace the current Total Facilities Management (TFM) Project Agreement for all services with another TFM agreement through a full tender process.</b></p>	<ul style="list-style-type: none"> <li>• Limited direct influence on supplier/subcontractor performance/results.</li> <li>• High risk of repeating difficulties / frustrations / non-compliance experienced with the existing TFM Project Agreement.</li> </ul>
<p><b>Conduct individual procurement exercises for each service.</b></p>	<ul style="list-style-type: none"> <li>• Lack of time; the existing TFM Project Agreement had a time frame of 24 months to conclude procurement and implementation and mobilisation of the contract;</li> <li>• The Council has limited time to implement.</li> </ul>
<p><b>Use a mix of in-house resources and direct to market procurement exercises for each service.</b></p>	<ul style="list-style-type: none"> <li>• The services the Council needs to procure are those that it cannot supply with in-house resources, within the current time constraints while also achieving value-for-money;</li> </ul>

	<ul style="list-style-type: none"> <li>• Some Facilities Management services will be supplied with in-house resources, such as reception, front-of-house and the help desk</li> </ul>
<p><b>Novate existing supplier subcontracts to the Council.</b></p>	<ul style="list-style-type: none"> <li>• The incumbent supplier has a one-month global termination clause for all subcontracts, and the nature and low frequency of some services mean novation would not achieve value-for-money.</li> <li>• It is proposed that the Council novates the contract with the incumbent supplier's catering subcontractor, Landscaping and Grounds Maintenance and Mailroom Services. Further analysis will be concluded with these services with support from Legal to ensure legality of novating contract.</li> </ul>

8.6. **Framework Selection** – A review of the consideration of which public sector framework agreements available to the Council that are best suited to satisfy the Council's performance expectations are still ongoing. At present, relevant framework agreements have been identified as follows;

- 1) Fusion 21 Limited
- 2) Crown Commercial Services (CCS)
- 3) NHS London Procurement Partnership
- 4) ESPO
- 5) Other framework agreement analysis still ongoing.

8.7. Fusion 21 has a wide variety of ready to use framework agreements awarded in compliance with the Public Contracts Regulations 2015. Each has multiple directly relevant specialist Lots that cover all aspects of the FM services the Council needs.

8.8. CCS has soft and hard FM service framework agreements available (RM1056) however the suppliers party to these agreements are predominately larger suppliers of Total Facilities Management solutions (including the Councils existing

provider), of a similar type to the incumbent supplier that may not be suitable. CCS are in the process of re procuring framework RM1056 with RM3830 (Facilities Management Marketplace) with the intention of creating a framework to include smaller bundled services suppliers.

8.9. NHS London Procurement Partnership has both soft and hard FM service framework agreements available. At this present time, both framework agreements expire on the 31 March 2018 so further due diligence is required to understand suitability.

8.10. ESPO Total FM framework agreement provides a TFM solution (Lot 1), Soft FM (Lot 2) and Hard FM (Lot 3). There are a multitude of different services under all Lots and either a direct award or a further competition can be run by the council.

## **9. People Services**

9.1. A Human Resources work stream has been established to ensure that all the Council's legal requirements relating to TUPE and Pensions and recruitment are undertaken correctly.

9.2. The council will TUPE back into WCC those services listed in para 7.7

The associated process with this activity include:

- Manage the 30-45-day consultation with affected staff
- Liaison with RBKC HR
- Liaison with Amey HR
- Liaison with Legal
- 3<sup>rd</sup> party Payroll provider

Dependent on design of the structure being proposed there will be a need to establish the current job salaries and contractual arrangements, which will transfer across with the employee in line with current TUPE legislation.

As part of the process new starter recruitment checks for TUPE'd staff to ensure the teams are allocated to the correct directorate and associated teams within WCC.

9.3. The associated risks with this activity include:

- Challenges on TUPE (is it legal, changing terms and conditions after TUPE): Identify workloads of existing staff, establish if work is organised on a borough basis.
- Challenges on any potential redundancies
- Difficulty engaging with the incumbent supplier

#### 9.4. Minimisation of risks:

9.4.1. **Challenges on TUPE:** To minimise the risks associated with the TUPE process it is proposed that HR will co-ordinate a joint consultation process with both AMEY and RBKC. This will allow for a co-ordinated approach to be taken, in line with current TUPE legislation and support from legal services. It is recognised that staff will retain their main contractual entitlements i.e. salary, annual leave entitlements but will be informed that their pay date will be moved to 20<sup>th</sup> of each month, in line with current WCC pay dates and that they will be entitled to join the LGPS (Local Government Pension Scheme).

9.4.2. **Challenges on any potential redundancies:** If TUPE applies, then the employees at the time of transfer automatically join the new organisation:

TUPE regulations state if the main or principal reason for an employee's dismissal is a TUPE transfer then it is automatically an unfair dismissal:

If the dismissal occurs before the TUPE transfer, and is unfair, then liability transfers to the new business owner.

If potential redundancy situations do arise as a result of a transfer, due to either economic, technical or organisational reason (ETO) for the change, for example to do with the day-to-day running of the business then consultation will be undertaken in line with current policy and procedures.

Should a redundancy situation arise it can begin before the transfer if the outgoing employer agrees but the redundancies must only be made after the transfer by the incoming employer. However, it is worth noting that WCC and AMEY should try and agree between them who pays the termination costs as part of the commercial agreement.

9.4.3 **Engagement difficulties with incumbent supplier.** Although a joint consultation is the preferred approach AMEY may not agree to the approach. This will not inhibit the sharing of information required as part of TUPE as there are clear legal requirements to do so.

A potential risk is information received on the staff groups contractual and structure within WCC may not be processed in time, due to the current MSP project being undertaken.

However, early engagement and relationship building with AMEY's HR team should mitigate any potential issues.

9.5. The council is not responsible for third party TUPE arrangements from one supplier to another. However, staffing levels and terms and conditions of employment will need to be provided to the new supplier once received. The

council should look for assurances from both third parties that the TUPE transfer is handled professionally and within legal guidelines

9.6. A full assessment of this matter on the LGPS scheme and any outstanding liabilities will have to be assessed.

## 10. Financial Implications

### Current Budget

10.1. The Council's current revenue budget for the TFM contract through Amey and the budget for LINK is £6.2m. This is broken down below:

Budget	£000
Amey	5,500
LINK	700
<b>Total</b>	<b>6,200</b>

The current budget is based on the Council's allocation of the overall TFM Tri Borough contract and costs for LINK.

10.2. The Council also holds a capital budget allocation for the Forward Maintenance Plan in the capital programme for services provided by Amey. The current budget for this is £5.5m (up to 2022/23).

### New Budget Requirement

10.3. A summary of the Council's new revenue budget requirement as part of this Facilities Management restructure is shown below:

FM Service	Annually £000
<b>Work Packages</b>	6,186
<b>FM Staffing Structure</b>	1,266
<b>Total Budget Requirement</b>	<b>7,452</b>
<b>Current Budget</b>	6,200
<b>Budget Gap</b>	<b>1,252</b>

As can be seen in the table above the estimated cost of the new FM team and work packages are likely to be in the region of £7.5m. This is approximately an

increase of £1.3m per year compared to current costs for Amey and LINK. The revenue consequences in 2018/19 will be dealt with by a virement as agreed by the City Treasurer and Executive Director for Growth, Planning and Housing. The revenue consequences thereafter in 2019/20 will be dealt with as part of the 2019/20 budget setting process and that the income received from Amey will be placed in a reserve to be utilised as needed to finance any short-term financing issues.

### Work Packages

10.4. The table below breaks down the estimates for the work packages that Amey currently provide and the likely annual costs to procure these individually:

<b>FM Service</b>	<b>£000</b>
Hard Services	2,417
Cleaning and Confidential Waste Disposal	1,166
Catering Hospital Service	90
Landscaping & Grounds Maintenance	19
Porterage, Stores & Archive Services	449
Reception & Front of House	216
Security Services	1,346
Management & Help Desk	482
<b>Total</b>	<b>6,186</b>

10.5. The estimated costs in the table above are based on a 20% uplift on the current Amey costs for these packages. This takes account of inflation, the framework discount (as part of the Tri-Borough TFM contract) the Council currently benefits from and general changes in the market.

### Facilities Management Team Structure

10.6. The new FM team is budgeted at £1.3m per year. This is based on a team of 27 officers to replace many of the roles that Amey and LINK currently provide. This structure includes a Head of Facilities Management, managers for individual FM services to security personnel and mail room staff. This is summarised below:

Post Title	No. Posts	Proposed Banding	Midpoint	NI	Pension	Cost per post	Total Cost
			Salary				
			£'000	£'000	£'000	£'000	£'000
Head of Facilities Management	1	5	76	9	19	104	104
Soft Services and Workplace FM Manager	1	4	53	6	13	72	72
Contracts and Hard Services Manager (M+E)	1	4	53	6	13	72	72
FM Hard Services & Minor Works	1	4	53	6	13	72	72
Assistant Facilities Manager	3	3	38	4	9	51	154
Helpdesk	3	2	28	3	7	38	115
Energy	1	4	53	6	13	72	72
Front of House Assistants (Reception)	5	2	28	3	7	38	191
Mailroom Supervisor	1	2	28	3	7	38	38
Mailroom	4	1	22	2	5	29	115
Handyman	1	4	53	6	13	72	72
FMP Manager	1	4	53	6	13	72	72
Porters & Stores	4	1	22	2	5	29	115
<b>Total</b>	<b>27</b>						<b>1,266</b>

### One off Revenue Costs

10.7. The exit from the Total Facilities Management (TFM) contract with Amey will lead to one off costs for consultancy services as part of the contract negotiation. At this stage it is estimated that this will cost in the region of £200k. These costs will be funded via the settlement payment the Council receives from Amey.

### Capital Budget

10.8. Capital works currently scheduled as part of the Forward Maintenance Plan can be met within the current budget allocation but will have to be re-procured. The profiling of the FMP and overall budget allocation will continue to be monitored and reviewed as part of the capital budget setting process.

### Financial Risks and Mitigations

10.9. The key financial risks and mitigations are outlined below:

Risk	Mitigation
Estimated costs of the new work packages are greater than expected.	Figures are based on an uplift of current costs as per the Amey contract which are considered in line with inflation and micro



	economic changes within the Facilities Management market.
No additional budget identified to fund the increased costs of the new FM function.	Income from the exit of the Amey contract will ensure the on-going budget requirement will be funded in the short term. Early engagement with the City Treasurers Department will ensure that any on-going budget requirement once the initial funding is utilised will form part of the medium term planning process.
Unforeseen one off costs of exiting the Amey contract and LINK.	The income payment due from Amey can go towards funding any one off costs should they arise.

10.10. Moving forward finance will work closely with the service to develop and cost the chosen future delivery model and assist with any procurement process. As the projected future operating costs become clearer any projected budget shortfall will be reported to members.

## 11. Legal Implications

11.1 The Director of Law has been consulted and comments that the proposed changes to the facilities management services have significant legal implications for the mutual early termination of the existing contract with a sole provider, the procurement and transition to sovereign borough contracts, the delivery of some services in-house and the creation of a contract management team to replace the LINK.

11.2 Arrangements for the termination of the current contract are dealt with in the confidential part of this report. Procurement of replacement services may be achieved by call-off from existing framework agreements either by further competition between the framework suppliers or by direct award provided due diligence is carried out to ensure that contracts are let in accordance with procurement law, the framework terms and conditions, that they represent best value and the Council's contract procurement rules are followed.

11.3 Given the fact that there is to be a change of provider, depending on the facts, there may be a relevant transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and the incoming contractor will have to act accordingly. If TUPE operates to transfer the contracts of employment of Amey staff, the incoming contractor will be required to employ them on the same terms (save

in relation to pensions). There are almost certainly obligations on Amey in the TFM Project Agreement arising on termination that may impact on its workforce, including the provision to the Council of information as to any staff Amey believes are in scope to transfer.

- 11.4 TUPE mandates that Amey provide the incoming contractor with employee liability information and that information be provided to its employee representatives (and a duty to consult in some cases).

*Legal Implications by Andre Jaskowiak and John Clinch of Shared Legal Services*

## **12. Communications**

- 12.1. Any changes to the management and execution of the Council's facilities management function will be communicated to all relevant internal and external stakeholders.

Following the Cabinet Member decision, the communications team will work closely with the service to deliver a strategy that will;

1. Make sure all stakeholders are aware of the changes, why and when they will be happening
2. Identifies and communicates any changes in process as to how facilities management requests are made
3. Highlights the benefits of changing our approach to facilities management

Through our ongoing bi-borough arrangements, WCC and RBKC will coordinate communication activity where necessary.

## **13. Risk Management**

- 13.1. The Facilities Management Mobilisation programme has established a series of work streams to identify, record and mitigate the likelihood that risks would occur and the potential consequential impact. The managed risks to the successful implementation of this proposal combine around:

- **data**; the inadequate and timely transfer of data held in the incumbent supplier's software, on the Council's assets and services, and insufficient accuracy and completeness
- **information**; poor quality and completeness of service descriptions required for the procurement
- **timely transfer of services**; delays and lack of readiness to transfer services from the incumbent supplier to the FM Team and multiple external suppliers

- **disagreements;** the inability of the three boroughs and the incumbent supplier to agree transition plans
- **service provision;** the fall in quality of service provision during the period of transition (and relative uncertainty) from the incumbent supplier to the FM Team and multiple external suppliers
- **competitive dynamics;** a lower than expected appetite amongst potential suppliers to compete to supply the Council with FM services

#### **14. Sustainability**

- 14.1. Social Responsibility will be addressed with all future re procurements and the councils own Social Responsibility delivery plan will be issued as part of any tender exercise including where the council propose to use framework agreements.

**If you have any queries about this Report or wish to inspect any of the Background Papers please contact: Guy Slocombe**

#### **BACKGROUND PAPERS**

For completion by the **Cabinet Member for Finance, Property and Corporate Services**

**Declaration of Interest**

I have <no interest to declare / to declare an interest> in respect of this report

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

NAME: \_\_\_\_\_

State nature of interest if any .....

.....  
*(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)*

For the reasons set out above, I agree the recommendations in the report entitled **Restructure of Facilities Management Service** and reject any alternative options which are referred to but not recommended.

Signed .....

Councillor Tim Mitchell, Cabinet Member for Finance, Property and Corporate Services

Date .....

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment: .....

.....  
.....  
.....  
.....

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, the City Treasurer and, if there are resources implications, the Director of People Services (or

their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

**Other Implications**

- 1. Resources Implications**
- 2. Business Plan Implications**
- 3. Risk Management Implications**
- 4. Health and Wellbeing Impact Assessment including Health and Safety Implications**
- 5. Crime and Disorder Implications**
- 6. Impact on the Environment**
- 7. Equalities Implications**
- 8. Staffing Implications**
- 9. Human Rights Implications**
- 10. Energy Measure Implications**
- 11. Communications Implications**

Note to report authors: If there are particularly significant implications in any of the above categories these should be moved to the main body of the report.

**APPENDIX 1**

**Proposed FM Structure**

