

CABINET

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OPTIONS FOR A FACILITIES MANAGEMENT SOLUTION FOR MEDWAY COUNCIL

Portfolio Holder: Councillor Alan Jarrett, Finance

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Summary

This report explains the benefits of a category management approach to facilities management. It describes two total facilities management (Total FM) options. It also makes a recommendation about the preferred option and seeks permission to commit the council to formal discussions in relation to finalising a business case for the preferred option of a joint venture.

1. Budget and Policy Framework

- 1.1 Medway Council spends £7 million per year on traditional facilities management services. This is from a total spend on facilities management of just under £19 million. These traditional facilities management services are funded from a variety of budgets because the spend is devolved to service areas that are based outside of Gun Wharf.
- 1.2 Traditional facilities management (FM) services relate to 'hard' and 'soft' FM services, such as planned maintenance and cleaning. A list of the services that comprise of the £7 million spend is as follows:

Statutory maintenance contracts (boiler servicing, etc...)	Printing services
Corporate cleaning	Catering
Building maintenance	Meeting room management
Security including opening and closing of buildings	Health and safety management of buildings
Window cleaning	Cash collection
Public Toilet cleaning	Records management
Utilities and energy demand management	Store management
MFDs (printers)	Other miscellaneous FM services

- 1.3 A Total FM solution is where the responsibility and, therefore, the risks associated with providing services and for managing the facilities are placed in the hands of a single provider.
- 1.4 The recommendation to undertake due diligence discussions with regard to a total FM solution is a matter for Cabinet.

2. Background

- 2.1 As part of the council introducing a new approach to procurement called category management, the project team has looked at categories of spend within the council rather than reviewing contracted spend in separate services and teams. One of the four areas identified to pilot the category management approach is facilities management. This review has led to options being considered which are not limited to traditional procurement options.
- 2.2 In May 2012, Procurement Board endorsed the exploration of two procurement routes following advice received by the Council about a variety of options including retaining an in-house provision of some services. Procurement Board agreed that all areas of FM spend should be part of the review. Council officers have undertaken a detailed review of the top 40 buildings (out of 164 buildings) by spend and other significant FM-related cost centres.
- 2.3 On 21 September, Procurement Board considered a further report that set out the findings of reviewing the top quartile of buildings and discussions with affected services and they endorsed the recommendation to Cabinet to commence Due Diligence discussions about creating a joint venture with Norse.
- 2.4 Following consultation with relevant portfolio holders it is proposed to concentrate on the traditional FM spend but to leave open the option of proceeding to include further elements of FM spend in a phased approach.

3. Options

- 3.1 The top two procurement options that were considered were:
 - 3.1.1 Undertake an OJEU procurement for a total FM solution
 - 3.1.2 Establish a Public to Public joint venture
- 3.2 As part of the review of procurement options, they were considered in the context of the objectives and outcomes that the council plans to achieve with the spend relating to facilities management. These objectives align to achieving *better for less*:

The better...

A flexible and responsive service to address future challenges and changes in the business and wider environment

- Find new & efficient ways of working
- Be more agile & flexible

Better quality of service and better performance in relation to statutory duties

- Greater strategic direction for FM
- Meet legislative regulations
- Improve the customer experience
- Better prioritisation of work
- Improved skills

Contribution to corporate objectives

- Support *Better for Less* principles & corporate vision
- Meet sustainability & green targets
- Demonstrate best practice

Contribute towards development of the local economy

- Opportunity to trade locally (e.g. to schools and other parts of the public sector)
- Supporting local/regional enterprise through the supply chain
- Offer increased employment opportunities to local people

The less...

The service must deliver sustainable cost reductions and value for money

- Cost reductions
- Use more intelligent methods e.g. Life cycle costing

Ability to transfer risk and increase cost certainty

- Transfer of appropriate risk to a 3rd party
- Fixed cost/cost predictability to aid budget setting

3.3 **OJEU Official Journal of the European Union¹) Procurement (Either by Competitive dialogue or through a framework)**

The option of formally tendering this procurement requirement in line with EU Procurement Regulations has been considered because the value of this procurement requirement is above the EU Procurement threshold for services of £173,934 and below are the advantages and disadvantages of this option:

Advantages

- Sustainable cost reductions / value for money
- Improve in-scope service performance, compliance and quality
- Achieve corporate & aligned vision (*Better for Less*, including sustainability objectives)
- Responsive service delivery to address changes in business & wider requirements / environment
- Transfer of risk management & better cost certainty

¹ An OJEU procurement is informed by the European public contracts directive (2004/18/EC) applies to public authorities including, amongst others, government departments, local authorities and NHS Authorities and Trusts. The directive sets out detailed procedures for the award of contracts whose value equals or exceeds specific thresholds. The threshold currently applying for a services contract of £173,934 net of VAT.

Disadvantages

- Scope may be reduced due to caution about the range of services that may be included, thereby reducing opportunities for economies of scale and increased efficiencies
- The need for a robust specification means that procurement could take eighteen months, including the tender exercise itself
- No direct influence outside of contract management, given the potential reputational risk.

3.4 **Public-Public partnership**

A public–public partnership is a partnership between a government body or public authority and another such body to provide services and/or facilities. The creation of a public-public partnership and the awarding of a contract for services to that partnership falls outside of the EU procurement requirements for public contracts, where all the participants are public authorities or fully publicly owned companies and where the principal part of the activities are carried out for the controlling public authorities. This is known as the *Teckal* exemption.

Norse Commercial Services Limited is a facilities management trading company that was established by Norfolk County Council, which is wholly owned by Norfolk County Council. It has a turnover of £200 million and 10,000 employees. It is currently a partner in 13 joint ventures, none of which are in the south-east. As it is a company that is wholly owned by Norfolk County Council it could therefore enter into a joint venture with the Council under the *Teckal* exemption.

Advantages

- Combines commercial acumen with public sector ethos
- Due to opportunities for direct influence through annual business planning and Joint Partnership Board membership, an increased range of services can be put in scope such as delivery of capital projects
- Flexible and responsive for service delivery to address changes in business & wider requirements / environment/response to market conditions
- Sustainable cost reductions / value for money
- Longer term income generation (50:50 profit share)
- Non-council investment in buildings and equipment
- Direct influence on the Board of Directors including chairmanship of the Board provides a greater degree of control to protect reputational risk although it is recognised that this will not be a majority representation.
- Veto power by the council in relation to the business planning
- Given the timescale (approx six months) for establishing a joint venture, this is the quickest approach to realising efficiencies, allowing potential savings to be incorporated in 2013/14 budget build
- Achieve corporate & aligned vision (*Better for Less*, including sustainability objectives)

Disadvantages

- Reduced initial savings compared to the OJEU procurement option

4. Advice and analysis

- 4.1 The Council has a spend of £7 million in traditional facilities management services. The current spend is dispersed across a number of services that are making their own arrangements. Some services have contracts with the same contractor but with very different rates. By aggregating the council's spend in relation to these traditional facilities management services, the council can leverage this spend to make it more efficient. The Total FM solution, commissioning a single provider to manage the full range of FM services, enables the leveraging of this spend so that it delivers efficiencies.
- 4.2 The challenge for either procurement option is to match defined needs with evaluated options. Two common reasons why service contracts fall short are failure to fully define the correct requirements and to evaluate the different working arrangements that suit that requirement.
- 4.3 Ultimately, the choice of procurement option should be driven by a thorough assessment of owner and end-user needs to inform the specification of the services required. In turn this will determine the best way to deliver those services.
- 4.4 When speaking with stakeholders, both internally and externally, the key outcomes that they want regardless of the type of FM service being discussed is flexibility and responsiveness.
- 4.5 The advantages and disadvantages of the OJEU procurement and PuP joint venture options are set out in paragraphs 3.3 and 3.4. Comparing these advantages and disadvantages with the key identified outcomes for FM services; the public- public partnership joint venture with Norse is the preferred option.
- 4.6 The joint venture option provides both flexibility and responsiveness because the resulting company will be partly controlled by the council and includes member involvement on the Directors' board and operational boards. Norwich City Council's member involvement includes the Finance portfolio holder and Deputy Leader on the Directors' Board and the relevant portfolio holder was on each of the operational boards relating to key functions like grounds maintenance or housing maintenance.
- 4.7 Given that much of the council's FM spend is with third parties, the potential savings for the joint venture option come from the profit share that otherwise would have solely benefitted the contracted provider. The joint venture arrangement means that a contractual obligation for predetermined/fixed inflationary uplifts is replaced by a considered review of where inflationary pressures are present in the costs of delivery. Therefore, further opportunities for aggregating other related facilities management spend could be considered over the life of the joint venture, which is typically 10 years.
- 4.8 A public-public partnership joint venture must demonstrate value through best consideration and this is achieved by benchmarking the business proposal that would be offered to the council following a period of due diligence. It is recommended that the Cabinet agree to Officers further exploring this option and return in February with an update.

- 4.9 Waveney and Suffolk Council have well established joint ventures and therefore they operate a thin client function where a single Head of Service is responsible for monitoring the overall performance of the company in relation to service delivery. This is in stark contrast to Norwich City Council, which recently established a joint venture with Norse, and is taking a phased approach to reducing it's client side whilst the joint venture develops in the first two years.
- 4.10 One of the criteria for the *Teckal* exemption is that the Council must demonstrate control and influence in the joint venture. Councils across the country have a variety ways of demonstrating it. All councils had the annual business plan go to Cabinet. Some councils have Operational Boards below the Board of Directors, where the relevant portfolio holders chaired those boards and would have regular meetings that included performance information and the opportunity to review the priorities for that year.

5. Risk management

- 5.1 The following risk categories have been identified for this proposal.

Risk	Description	Action to avoid or mitigate risk
Disruption to end users as a result of the transition to new FM delivery model	Any changes in provider of services may cause a dip in service delivery.	<p>A sufficient transition period will be built into the procurement strategy on order to minimise disruption to service users.</p> <p>Creation of clear, stringent quality KPIs that are tied to consequences for failure to achieve required quality thresholds.</p> <p>Category management team FM client function will monitor KPIs and manage relationship with a provider – placing an emphasis on service quality.</p>
The Total FM option is not viable for implementation.	The finished scope of services may be of insufficient value to be of interest to the preferred provider.	A clear governance process for determining the scope to be included as part of the procurement process.

The proposed due diligence discussions become protracted.	There is insufficient capacity within the organisation to complete best consideration within three months.	Ensure that there is a dedicated project team established within the existing governance arrangements and structures.
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6. Consultation

- 6.1 Officers met with service managers that are responsible for significant FM contracts and the buildings in the top 40 by spend. The information generated from these meetings has been analysed to inform the options appraisal and the meetings also provided an opportunity to explain the benefits of total FM, as well as the advantages and disadvantages of the procurement routes. In the main, service managers engaged positively to the concept of total FM, however some did express concerns.
- 6.2 As part of the process, the project sponsor, Assistant Director for Legal and Corporate Services, met with portfolio holders to explain the total FM solution and the procurement options available.
- 6.3 Officers and Councillors have met with three partners of Norse, Enfield Council, Waveney District Council and Suffolk Coastal Council. There has also been a telephone conference with Norwich City Council.

7. Financial and legal implications

- 7.1 The legal requirements for the use of the *Teckal* exemption are that the (i) control test and (ii) the function test are both satisfied. The control test requires all parties with an interest in the joint venture to be public authorities or entities that are wholly public owned, so that the authorities can (jointly) exercise a similar control to that exercised over their own departments. The function test is that the joint venture carried out the principal part of its activities with the controlling authorities. European Commission is proposing to codify the *Teckal* exemption. Under the draft proposals (which if enacted would come in to force in 2014) at least 90% of the work undertaken by such a joint venture would need to be carried out for the controlling authorities.
- 7.2 There are no direct financial implications from the recommendation to commence due diligence discussions in relation to a potential joint venture. Details of the scope and phasing of services and potential savings will be reported back in due course.

8. Recommendations

- 8.1 That the Cabinet agree to due diligence discussions taking place over the next three months with Norse Commercial Services Limited.
- 8.2 That an update report about progress, with details about potential savings and the phasing of services, is presented to Cabinet in February 2013 for a final decision.

8.3 That at the same time preparations for an OJEU procurement are progressed in case the due diligence discussions break down.

9. Suggested reasons for decision(s)

9.1 This arrangement will enable the council to better manage the spend on activities related to facilities management, ensure the quality of services and works that are delivered and better safeguard the authority on statutory, regulatory and reputational issues.

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Background Papers: None