

Item No. 19.	Classification: Open	Date: 9 March 2021	Meeting Name: Cabinet
Report title:		Extension of the Mitie FM Ltd (Interserve) Facilities Management Contract	
Ward(s) or groups affected:		All	
Cabinet Member:		Councillor Rebecca Lury, Finance, Business and Jobs	

FOREWORD – COUNCILLOR REBECCA LURY, CABINET MEMBER FOR FINANCE, BUSINESS AND JOBS

In light of the decision to re-introduce a gateway 1 report, we are proposing the extension to the existing contract to cover the interim period to ensure that we have suitable facilities management services across our council estate.

RECOMMENDATIONS

1. That Cabinet approves the variation to extend the term (and agree associated changes noted in this report) of the consolidated facilities management (FM) contract with Mitie FM Limited (Mitie) (previously known as Interserve (Facilities Management) Limited (Interserve) as outlined in paragraph 8, for a period of up to 18 months, from 01 April 2021 to 30 September 2022, at an estimated total cost of £16m.
2. That Cabinet notes that from the contract start date 1 February 2013 to 30 September 2022 the estimated total contract value would be £79m.
3. That Cabinet notes that a three month break clause will be sought as part of the variation to allow for an earlier end to the contract if required, as further detailed in paragraph 14.

BACKGROUND INFORMATION

4. Following a competitive procurement exercise using the Government Procurement Service (GPS) RM798 Framework Agreement, Interserve FM were awarded a contract to provide consolidated facilities management services for the council's headquarters at 160 Tooley Street and other council properties under the contract. The initial contract period was for five years from 1 February 2013 to 31 January 2018, with the option to extend for a further two years until 31 January 2020. This option has been implemented.
5. In September 2019 Cabinet approved a fourteen month extension to allow the procurement programme for two contracts Hard or Soft FM to be undertaken. Bidders could only win one of the contracts, and despite

extensive market testing, the invitation to tender failed to attract sufficiently robust interest to award new contracts.

6. As a direct consequence of the pandemic, the council is undertaking a review of the operational estate, and while any new contract has the right to flex buildings in or out, wholesale service change may increase the risk of a new supplier seeking compensation against the weighted cost of the contract. In December 2020, a decision to halt the procurement project was taken. This pause has allowed the council to reassess the size and scope of the new contract and review the procurement strategy.
7. In addition to the procurement activity, the contract with Kier for hard FM services ended, with the services transferring to Interserve in June 2020. While performance remains above satisfactory, there has been an increase in cost, although most of which can be attributed to the pandemic. To provide greater cost certainty during the extended period all operational buildings will be subject to the comprehensive element of the FM contract meaning all reactive and planned maintenance tasks up to £1000 are met by the contractor.
8. The council has recently been advised that with effect from 1 December 2020 Interserve Support Services business, and its incorporated companies have been acquired by Mitie PLC. This has resulted in a change of name of Interserve Facilities Management Limited to Mitie FM Limited. The council have been advised that there is no further impact on the contract or the service obligations as a result of this transaction.
9. This report therefore seeks to obtain approval to extend the contract with Mitie FM Ltd for up to eighteen months to allow the council to carry out a review of the size and scope of the contract and allow sufficient time to conclude the procurement process and mobilise a new facilities management contract.
10. Whilst the current contract was let to provide a mix of hard and soft FM service initially to Tooley Street, the contract allowed additional buildings and services to be added as well as additional project spend; all of which have been approved by earlier gateway 3 reports. From a single property at contract commencement date the contract now provides hard and soft services to 145 properties across the operational estate. Each variation has resulted in increasing the total number of operational buildings included in the contract for the provision of hard and/or soft services. This has resulted in a current estimated spend from 1 February 2013 to 31 March 2021 of £63m.
11. The contract is split into fixed costs with the provision for additional works above the threshold of £1,000, for planned and reactive works and ad-hoc or temporary ongoing security services. Fixed costs include mechanical and electrical planned preventative maintenance, cleaning, pest control and fixed site security.

KEY ISSUES FOR CONSIDERATION

Strategy Overview

12. The nature of the proposed variation is to extend the contract for a period of eighteen months to allow the council to conduct a review of the operational estate service delivery model, and the re-procure and mobilise a new FM contract. The completion date is estimated to be 30 September 2022.
13. The estimated value of this proposed variation is £16m, which, combined with the projected contract spend of £63m from 1 February 2013 to 31 March 2021 gives an overall estimated contract value of £79m.
14. All reasonable steps will be taken to complete the procurement process and achieve a contract start date earlier than 1 October 2022. In the current contract a break clause is included which allows the council to terminate the agreement (if required) on six months' notice without termination payments being payable. The council will enter discussion with the provider to reduce this term to three months, which will be reflected in the Deed of Variation.
15. Cabinet was presented with a Gateway 0 report 13 March 2018 and Gateway 1 report 11 December 2018 that recommended having two FM contracts (hard and soft FM) to provide resilience following the collapse of Carillion. The report also included bringing in-house multiple services (FM help desk, pest control, and cleaning at Tooley Street and Queens Road). The help desk has been brought in house and is operating successfully, pest control goes live on 1 April 2021. This leaves the cleaning service at Tooley Street and Queens Road which will be brought in-house as a part of the future procurement process in line with the TUPE Regulations.
16. The nature of the services for this additional period will remain the same as those listed in paragraph 10.
17. The contract with Interserve (now Mitie FM Ltd) is a NEC3 form of contract, which is designed to encourage both the council and the contractor to work in partnership and overcome any difficulties, prior to resorting to the contract performance schedules.
18. The contract has a performance management framework including penalty related key performance indicators (KPIs) and contract escalation procedures should the contractor fail to deliver. Early warning notices and risk reduction meetings are used to resolve perceived difficulties in the first instance. This process is available to both sides and works reasonably well.
19. The current performance of Interserve FM (now Mitie FM Ltd) is above satisfactory despite the pandemic, with KPI performance currently reflecting the company meeting 17 of the 19 KPI targets. During the

pandemic Interserve have proven to be a very resilient partner, supporting the council in maintaining, securing and cleaning across the operational estate.

Future proposals for this service

20. A new Gateway 1 report will also be presented to Cabinet in March 2021. Subject to approval recommendations for contract award will be via a Gateway 2 report in April 2022 and the new contract is estimated to commence 01 October 2022.

Alternative options considered

21. Do Nothing. This service has to continue, therefore this is not an option as the services provided by the contractor are required to ensure statutory property compliance and required levels of property service.
22. Let a New Contract. The market are not interested in a short term contract of up to 18 months and this would be reflected in significantly higher costs if bids were to be received.
23. Extension of Existing Contract. As this is a short term extension of a maximum of 18 months and is to allow the procurement of the new service to be completed then there were no alternative options which were considered appropriate.

Identified risks for the variation

24. Corporate facilities management are aware of the well publicised financial position that Interserve faced during the 2018/19 financial year, however following the merger with Mitie they are in a much better financial position. Following their merger CFM have found no evidence to suggest that Mitie will not have the ability to fulfill this extension but will continue to monitor performance and meet regularly with the account director. A low risk rating is considered reasonable.

Risk No.	Risk Identified	Risk level	Mitigation
R1	Procurement process for CFM 2020 is delayed	Medium	<ul style="list-style-type: none"> • CFM will control and monitor the process throughout.
R2	Mitie FM cease trading	Low	<ul style="list-style-type: none"> • Recent credit checks for the contract parties have shown a secure credit rating • Use of early warning mechanisms in NEC3 contract, which is applicable to both parties. • Contract monitoring • Regular meetings with Head of CFM

			and Account Director to monitor identified risk.
	Key performance indicators (KPI) performance declines	Low	<ul style="list-style-type: none"> Regular monitoring by CFM contracts team.
R4	Extension of the contract challenged	Low	<ul style="list-style-type: none"> CFM have written to the companies that previously expressed an interest in bidding for the new contract. There has been no challenge made by the companies to the halting of the procurement process. The extension of this contract to allow the conclusion of the procurement for a new contract is allowable under Regulation 72 of the Public Contract Regulations. There is a clear procurement process underway.
R5	Pandemic C-19	Medium	<ul style="list-style-type: none"> Potential for suppliers to struggle to meet contractual arrangements due to staff shortages during the pandemic The contractor has performed well during the pandemic, supporting the council throughout in a flexible, open and transparent manner. Nothing has been too much trouble for them.
R6	Brexit	Medium	<ul style="list-style-type: none"> Potential for supply chain issues especially sourcing specialist items from the European Union Potential for cleaning and security staffing issues This area will be closely monitored

Policy implications

25. A key element of the corporate plan that the FM strategy supports is 'transforming public services'. This requires sound resource management of the council's property assets, how they are utilised and their effective and efficient procurement and delivery of FM services are integral to the sound management of the council's property assets.
26. The medium term resources strategy aligns financial priorities with the management of assets and the associated resources with which the council delivers its services. Changes to the operational estate may significantly alter the facilities management requirements, by having an informed, flexible and modern service platform Corporate Facilities Management aim to support the council's medium and long-term objectives by providing opportunities for efficiency savings.

27. The theme of 'valuing the environment' will be increasingly supported through the delivery of an improved FM service and effective strategic management of FM. Supported policies include 'Southwark Cleaner Safer' and the 'Sustainable Community Strategy'. Other key corporate objectives are indirectly supported through improving working environments, improving customer facilities, removing single use plastics and enabling a more effective and flexible service delivery model in line with the fairer future procurement framework.

Contract management and monitoring

28. The Head of CFM will continue to be the responsible person for the contract as the service manager, supported by the division's contract management, technical and operational teams.
29. The existing management and monitoring currently in place includes:
- Monitoring budget spend and compiling monthly spend profile reports
 - Checking invoices for accuracy
 - Providing robust single point of contact for end users
 - Proactively responding to complaint and service improvement requests
 - Weekly corporate compliance risk assessment monitoring
 - Regular project reviews and post work inspections
 - Monthly contractor performance monitoring meetings, six monthly service reviews and the annual performance review
 - Ensuring contractor monthly reports are received in a timely manner.
30. Mitie are required to comply with the requirements of the contract's agreed performance mechanism regime which is:
- To respond in accordance with the prioritisation of reported service performance failures.
 - To operate procedures and systems to record information in support of performance monitoring and to enable regular robust performance reporting.
 - To monitor the performance of the service and produce monthly performance reports for the employer.
31. Performance of the contract will continue to be measured and reported by means of a suite of key performance indicators (KPIs) covering management of the contract and customer services as well as both hard and soft FM service delivery.
32. CFM conduct regular site inspections and visits in order to measure and monitor the quality of the service provided and feedback from end users is actively sought.

33. As the estimated value exceeds the relevant Public Contract Regulation threshold, CFM will prepare a monitoring report to the relevant DCRB.
34. As the contract also relates to a strategic procurement, CFM will prepare an annual monitoring report to CCRB in line with contract standing orders.

Community impact statement

35. This contract has a direct impact on the occupants of all the buildings covered by this contract, as well as all council staff, service users Southwark residents, visitors and the council's elected members.
36. It will continue to provide a healthy and safe working environment, which will seek to ensure that no elements of the council's equality agenda are negatively impacted.

Social value considerations

37. The Public Services (Social Value) Act 2012 requires that the council considers, before commencing a procurement process, how wider social, economic and environmental benefits that may improve the wellbeing of the local area can be secured.

Economic considerations

38. Within the contract, Interserve FM (now Mitie FM Ltd) has employed three apprentices. All three completed their apprenticeship and have been offered a permanent role on the contract or with Interserve (now Mitie FM Ltd) elsewhere. The finance apprentice has since moved onto another organisation and the two building services/maintenance apprentices have recently completed their final year and continue to work for Mitie.
39. The apprentices attended college one day a week and the remainder of their week is spent gaining knowledge within Tooley Street and the wider estate, working with the static and mobile engineering team to ensure that they are able to demonstrate the skills learnt in the classroom. Mitie FM work closely with the college and apprenticeship schemes meeting frequently with the training officers to review progress and support where needed.
40. Prior to the contract extensions, the Mitie (formally Interserve) FM team were supported by a graduate who carried out; a KPI review, asset verification exercise, planning of PPM tasks, updating their computer aided facilities management (CAFM) system and working with contractors to collate the safe system of work documentation. Interserve (now Mitie FM Ltd) have committed to reviewing the possibility of taking on an intern or a management graduate trainee during the extension period, as their apprenticeships last approximately three years.

Social considerations

41. The contract was tendered on the basis that London Living Wage (LLW) would apply to all contractor staff that work on the contract both directly employed by the contractor and sub contracted to them. A specific LLW service delivery plan was included in the quality evaluation and Interserve FM's (now Mitie FM Ltd) commitment to LLW was confirmed through the clarification process both in terms of price and scope. The contractor has continued to undertake ongoing LLW monitoring and reporting arrangements; however, the risk for LLW increases during the extension period will fall on the council from April 2022.
42. The council can exclude companies who break the law by blacklisting or have not put into place genuine actions concerning past black listing activities. The council can require "self-cleaning" which enables a potential contractor to show that it has or will take measures to put right its earlier wrongdoing and to prevent them from re-occurring and to provide evidence that the measures taken by the economic operator are sufficient to demonstrate it has:
 - "owned up": clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities
 - "cleaned up": taken concrete technical, organisational and personal measures that are appropriate to prevent further criminal offences or misconduct
 - "paid up": paid or undertaken to pay compensation in respect of any damage caused.
43. The council has requested the necessary information from Interserve (now Mitie FM Ltd) and they have confirmed that they are not in breach of the requirements under Regulations 3(1) of the Employment Relations Act 1999 (Blacklisting) Regulations 2010. The contract conditions also include a condition requiring compliance with legislation (including the Blacklisting Regulations).

Environmental/sustainability considerations

44. Interserve (FM) (now Mitie FM Ltd) are required to provide services that support, and do not compromise, the Southwark green building targets, sustainability policy and Fairtrade status, and support the ongoing climate emergency programme, including removal of single use plastic, installation of LED lighting and air source heat pumps instead of gas fired boilers for office heating

Finance implications

45. The proposed variation to extend the contract for a period of eighteen months to 30 September 2022 is estimated to be c. £16m, based on current activity/volumes and changes in the contract pricing mechanism,

bringing the combined estimated contract value over the period to c. £79m. The cost of the contract extension will be met from the existing budget resources available in both CFM and departmentally for this contract including index linked inflationary uplifts for 2021-22 and part-year 2022-23.

46. The contract is structured into a number of cost streams, with a fixed lump sum price element contained in Cost Stream 1 (CS1), along with additional cost streams, as follows:
 - Cost Stream 2A (CS2A) - works above the financial threshold limit (FTL) of £1000
 - Cost Stream 2B (CS2B) - works outside of the contract scope
 - Cost Stream 2B (CS2Bs) – all ad hoc security works/requests
 - Cost Stream 2C (CS2C) – projects and task orders
47. As noted at paragraph 28 to 34, stringent contract management and monitoring arrangements will remain in place, including budget and performance monitoring/reporting.
48. This report notes it is the intention to bring cleaning services at Tooley Street and the Queens Road complex in-house when the new contract takes effect in October 2022. This change in the delivery model is likely to carry a greater cost than under the current and interim arrangements, and will be fully outlined in a separate Gateway 2 report in April 2022.

Legal implications

49. Please refer to paragraph 54

Consultation

50. All internal departmental stakeholders have been consulted.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Head of Procurement

51. To This report seeks the approval of Cabinet for a variation to extend the term (and agree associated changes noted in this report) of the consolidated facilities management (FM) contract with Mitie FM Limited (Mitie) (previously known as Interserve (Facilities Management) Limited (Interserve) as outlined in paragraph 8. This covers a period of up to 18 months, from 01 April 2021 to 30 September 2022, at an estimated total cost of £16m.
52. The resultant contract period would therefore be from a start date 1 February 2013 to 30 September 2022, with an estimated total contract value of £79m. The report does note that a three month break clause will

be sought as part of the variation to allow for an earlier end to the contract if required, as further detailed in paragraph 14.

53. The report details the plans for the Management and Monitoring of the Contract in paragraphs 28-34, with risks and mitigating actions in para. 24. Social value considerations are set out in paragraphs 40-43, including the confirmation that London Living Wage (LLW) is payable under this contract.

Director of Law and Governance

54. This report seeks the cabinet's approval to the variation of the consolidated facilities management (FM) contract with Mitie as further detailed in paragraphs 1-3.
55. The original appointment of Interserve (now Mitie) was subject to, and awarded in accordance with the Public Contract Regulations applicable at that time, and it is therefore necessary to ensure that any variation to be made to the contract is permitted within those procurement regulations. Regulation 72 permits modifications to be made to contracts during their term, in certain circumstances. This includes at Regulation 72(1)(e) where the modification is not substantial. Having considered the circumstances noted at Regulation 72(8) which notes those modifications which are considered substantial, it is considered that the contract can be varied under this provision, as the extension is to allow the procurement to be undertaken and completed in circumstances that were beyond the council's control. Whilst a risk exists, it is considered low in these circumstances.
56. Contract standing order 2.3 requires that no steps are taken to vary a contract unless the expenditure involved has been included in approved estimates, or is otherwise approved by the council. Paragraphs 44-49 confirm the financial implications of this variation.

Strategic Director of Finance and Governance (H&M 20/136)

57. This report recommends that Cabinet approve the variation to extend the term of the consolidated facilities management (FM) contract with Mitie FM Limited (Mitie) (previously known as Interserve (Facilities Management) Limited (Interserve) for a period of up to 18 months, from 01 April 2021 to 30 September 2022, at an estimated total cost of £16m.
58. CFM will control the budget provision and in the longer term as the outcome of the re-procurement of FM services is determined the impact on resources will be reported to Cabinet in the normal way via budget setting and approval processes.
59. Departments will continue to monitor and control those budgets held beyond CFM for ad hoc FM service requests and in terms of lifecycle

investment, provision will continue to be confirmed within the Council's approved capital programme.

60. The report notes the plan for in house services to be extended to cleaning at Tooley Street and Queens Road and that the financial implications will be fully noted alongside the future contract award decision for FM services.

BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
Gateway 0 - facilities management contract for the council's operational estate 13 March 2018	160 Tooley Street, SE1 2QH.	Paul Symington Phone number 0207 525 0225
Gateway 1 – Procurement strategy approval Facilities Management (FM) contract for the Council's Operational Estate 11 December 2018		
Gateway 3 – Extension of the Interserve Facilities Management contract 17 September 2019		
Links (please copy and paste into browser): http://moderngov.southwark.gov.uk/documents/s74539/GW0%20-%20FM%20contract%20for%20the%20councils%20corporate%20estate.pdf http://moderngov.southwark.gov.uk/documents/s79139/Report%20Gateway%201%20-%20Procurement%20Strategy%20Approval%20Facilities%20Management%20FM%20Contract%20for%20the%20Council.pdf http://moderngov.southwark.gov.uk/documents/s84631/Report%20Extension%20of%20the%20Interserve%20Facilities%20Management%20Contract.pdf		

APPENDICES

No.	Title
None	

AUDIT TRAIL

Cabinet Member	Councilor Rebecca Lury, Finance and Resources		
Lead Officer	Paul Symington, Head of Corporate Facilities Management		
Report Author	Paul Symington, Head of Corporate Facilities Management		
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Key Decision?	Yes		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
Officer Title	Comments Sought	Comments Included	
Director of Law and Governance	Yes	Yes	
Strategic Director of Finance and Governance	Yes	Yes	
Cabinet Member	Yes	Yes	
Date final report sent to Constitutional Team		25 February 2021	