



## Executive Director/Director Non-Key Executive Decision Report

**Author/Lead Officer of Report:** Whied Latif

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**Report to:** Executive Director of Place, Laraine Manley

**Date of Decision:** 19<sup>th</sup> June 2020

**Subject:** Cleaning Insourcing – Project Update & COVID-19 Impacts

Which Cabinet Member Portfolio does this relate to? *Cabinet member for Finance Resources and Governance*

Which Scrutiny and Policy Development Committee does this relate to? *Overview and Scrutiny Management*

Has an Equality Impact Assessment (EIA) been undertaken? Yes  No

If YES, what EIA reference number has it been given? *(792)*

Does the report contain confidential or exempt information? Yes  No

If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-

### **Purpose of Report:**

The purpose of this report is to provide an update on the overall position of the Cleaning Insourcing Project specifically in relation to the impact of COVID-19 on the project, identify risks relating to a 1<sup>st</sup> July 2020 insourcing including potential options a later insource date delivery and obtain approval from the Executive Director for recommendations in this report.

**Recommendations:**

It is recommended that the Executive Director:

- Approves a six month extension to the Cordant contract which will facilitate insourcing and deal with unanticipated issues so the process can be completed before the end of this year.
- Requires that the contract extension has a break clause that can be exercised after three months to allow insourcing at 30 September 2020; and where for good reason this is not possible insourcing should occur on 31 December 2020.

Lead Officer to complete:-	
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.
	Finance: <i>Chloe Parker</i>
	Legal: <i>Marcia McFarlane</i>
	Equalities: <i>Annemarie Johnston</i>
<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>	
2	<b>Lead Officer Name:</b> <i>Whied Latif</i>
	<b>Job Title:</b> <i>Project Manager</i>
<b>Date:</b> <i>(Insert date)</i>	

## **1. PROPOSAL**

### **1.1 Background**

Following a Cabinet decision in September 2015 to re-tender cleaning services for the Council's buildings and premises, Sheffield City Council undertook a procurement process and engaged the successful contractor which was Cordant Cleaning Ltd to provide cleaning services. The contract commenced on 1<sup>st</sup> July 2016.

On 29<sup>th</sup> May 2019 Cabinet were asked to consider a number of options for the future of this service. After consideration of all options, the decision was made to extend the contract by 12 months with the instruction to insource the Cordant cleaning service to the Council from 1<sup>st</sup> July 2020.

#### **Current Position**

Since September 2019 the Cleaning Service Insourcing Project was underway to delivering Cabinet's decision but the impact of measures to manage the spread of COVID-19 delayed this progress. At 1<sup>st</sup> June 2020 an increased risk to this project was noted because actions intended to protect the council during insourcing and normally undertaken during the final months leading to the end of a contract were as a result, substantially delayed and consequently significant risks were incorporated to the project.

Transfer of Undertaking (Protection of Employment) Regulations 2006 (as amended), TUPE will apply to the transfer of staff. In managing the transfer of staff, officers received the initial TUPE Employee liability Information from Cordant and are currently in discussion with Cordant to agree the consultation plans and communication timelines to ensure the transfer into the Council as per plan.

The Council initially engaged with Cordant in January 2020 with requests for Employee Information and Terms and Conditions. Over the last few weeks significant work has been undertaken with Cordant. Terms and Conditions information have now been provided however concerns still remain regarding outstanding Employee Information.

TUPE requires the Council and Cordant to undertake consultation and in advance of the transfer the Council must give specific information to Cordant. As a consequence of social distancing and the impact of COVID-19 the Council, Cordant and their trade union representatives will face serious challenges engaging and having effective communications with transferring employees. This introduces risks when trying to validate the data, including individual terms and conditions from Cordant; there is also a risk of challenge adequacy of consultation under TUPE.

As part of the Operations work stream officers have identified the future operating model for the cleaning operatives when the transfer takes place and how to manage and schedule work activities. This also includes the recording of work start/finish times, annual leave and sick leave data to inform payroll.

The ICT equipment required by operatives to undertake their daily duties has

been delivered. However due to the business continuity work ICT is currently engaged in, building and configuring the hardware cannot be undertaken till August 2020. The hardware will then have to be fully tested to ensure it meets our operational requirements.

A review of required uniform and PPE is currently taking place and this action remains on target. The challenges in ensuring appropriate sizes, fitting, livery and issuing of these prior to go live are increased because these issues that impact on staff safety are of considerable significance because of risks associated with COVID-19.

The project has established that a number of supply chains are already in place for the procurement of materials, consumables and machinery, however supply chain communications have confirmed that due to COVID-19 stock and delivery times have been impacted.

### **Project Challenges**

- COVID-19

The recent outbreak of the COVID-19 pandemic has had an unprecedented impact on people's lives resulting in severe restrictions being placed on the number of people that can congregate in any one place.

This places a real challenge as we try and develop the consultation and training plans which involve a number of the cleaning employees being required to attend together. In addition, staff absences within both the Council and Cordant resulting from COVID-19 will also mean that fulfilling our legal TUPE consultation requirements will be difficult.

ICT equipment for the staff has been delivered, however COVID-19 has meant that current ICT resources are as a priority, deployed on business continuity work. This means that building, configuring and testing the devices before the Go Live of 1<sup>st</sup> July 2020 is not possible.

As a result of the 'stay at home' and 'working from home' guidance there is currently a reduced workforce within Transport and Facilities Management to provide the support to the project during the final preparation before transfer. The availability of resources over the next month is uncertain and this is the period where activities now need to be brought to a conclusion in time for the 1<sup>st</sup> July transfer and start of transition actions. This is the period where the Project Team and wider Facilities Management support needs to be at its highest.

- FM MER

Facilities Management are currently undergoing an MER process and although this process is progressing, the COVID-19 position increases the likelihood that this will not be completed before the 1<sup>st</sup> July. This will result in line management and responsibility uncertainty for cleaning supervisors and operatives transferring into the Council as the existing Cordant cleaning management are out of TUPE scope.

The new FM structure introduces new responsibility for a number of posts which include line management of cleaning supervisors and cleaning employees. We

need to be able to communicate and train the individuals in these posts prior to the 1<sup>st</sup> July to ensure they are aware of their responsibilities and the new processes/procedures they need to follow.

- Quality of Information Supplied

There are increasing concerns regarding the accuracy of information Cordant are sharing on transferring employees' terms and conditions of employment and the level of detailed information which they are able to share. This has a significant impact on the Council's ability to consider appropriate Measures and ultimately to manage employees under their correct terms and conditions.

From a legal perspective, Cordant have to provide non-anonymised ELI data no later than 28 days prior to transfer date.

In addition there are concerns around how Cordant would be able to consult with staff on any proposed measures given access to staff in the current situation and difficulties in communicating through non-face to face channels.

## **2. HOW DOES THIS DECISION CONTRIBUTE?**

2.1 The priority of the Council's corporate plan includes:

- being an In Touch Organisation by making the best use of public funds; and also
- tackling inequalities by working towards Sheffield to be a Living Wage city.

The decision to extend the current Contract will provide immediate continuity to the cleaning service provided to in the region of 150 sites across the city ensuring that we deliver healthy, clean & safe environments.

The decision to insource the service to the Council does not appear to have an immediate positive impact on cost saving. However, in the long run, it helps deliver significant social value benefits and boost local economy through the employment of staff with a clear workforce development strategy. All these provide added value to services such as supporting local communities; improving environmental performance and sustainability and offering opportunities for vulnerable groups.

## **3. HAS THERE BEEN ANY CONSULTATION?**

3.1 The Council is not required to consult on the contents of this report.

This project will however involve staff transfer under the TUPE Regulations 2006 (Amended) and compliance with these Regulations including consultation with trade unions and transferring staff on such arrangements. If this proposal to extend the contract is approved, consultation with the relevant staff and trade unions will be required with support from Legal, Human Resources and Finance and Commercial Services.

## 4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

### 4.1 Equality of Opportunity Implications

4.1.1 The proposal will continue to support advancing equality of opportunity. It will ensure continuity of service in providing clean, safe environments for staff to work and for customers using community building or other venues. The staff employed will have continuity of service. All are paid a minimum of the real living wage and zero hours contracts have been eliminated. Targets are built into the contract with regards to employment and skills and these will continue to be monitored and fulfilled.

### 4.2 Financial and Commercial Implications

#### 4.2.1 **Commercial Position**

Under the Public Contract Regulations, the Council has the ability under clause 72 to extend or modify a contract during its term. Procurement Policy Note 01/20 – responding to COVID-19 which was published on 18/03/20 re-iterates this guidance where all the following conditions are met:

- The need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen
- The modification does not alter the overall nature of the contract
- Any increase in price does not exceed 50% of the value of the original contract

There is an option to extend the current contract by a year with Cordant via a waiver.

The extension period would be from 01/07/2020 to 31/12/2020 with the option to break and initiate insourcing from 3 months onwards working on the basis of a rolling 3 month notice period. This will allow a revised target insourcing date of 01/10/2020.

Discussions have been held with Cordant's senior management team which confirm they are willing to enter into formal discussions to extend the contract. Confirmation has been received that the increase will be in line with the contractual indexation (RPIX as at May 2020 – confirmed in June 2020). To assist in understanding the financial implication an estimate of annual increase is based on the average of the previous 3 years RPIX (2.865%).

## Cost Implications

The table below identifies the increase to the Cordant cleaning fixed fee for any 6 month extension:

2019/20 Contracted Fixed Fee (for 6 months)	£1,088,348.61
2020/21 Proposed Fixed Fee (includes annual indexation/Living Wage Increase)	£1,119,529.80
increase £	£31,181.19
increase %	2.865%

The estimated cost for the Council to insource and self-deliver the service for a 6 month period was £1,336,500 (as identified in the Cleaning Service Future Delivery Cabinet Report) which remains a £216.5k increase based on the Cordant 6 month 2020/21 extension cost.

### 4.3 Legal Implications

- 4.3.1 (a) The council must consider whether it can comply with its employer obligations to transferring employees if in spite of the current circumstances cleaning services is insourced at contract end date. Specifically:

Transfer of employees must be taken in accordance with the Transfer of Undertaking (Protection of Employment Regulations 2006 as amended (TUPE). Regulation 13 TUPE requires the council to consult with employee representatives for council employees affected by the transfer. Since transferring employees will be joining an existing service within the council in-house consultation is required.

Regulation 13 TUPE also requires the council to provide information to Cordant in order that they can consult with their employees on any measures the council intends taking after the transfer. The council requires full and correct information from Cordant in order to fulfil this obligation.

The council could be required to pay a statutory award where it fails to inform or consult employees. The award is calculated based on the gross pay of the affected employee, for a period of up to 13 weeks and paid to each employee that successfully claims they have not been consulted.

The council will have a duty to provide transferred employees with safe systems of working and a safe place of work. Breach of health and safety is a criminal offence and can result in fines to the employer in breach.

- (b) Proposals for contract extension are consistent with the Public Contract Regulations 2015 and not inconsistent with Procurement Notices issued as a consequence of Covid-19.

The council must comply with all termination provisions in the contract as the contract proceeds towards the end.

(c)The 2019 cabinet report delegated to the Executive Director, Place, in consultation with the Director of Human Resources, the Director of Finance and Commercial Services and the Director of Legal and Governance authority to 'take all other necessary steps not covered by existing delegations to achieve the outcomes outlined in the report'; an extension of up to six months due to Covid-19 keeps the proposals in this report consistent with achieving outcomes in the 2019 Cabinet report.

#### 4.4 Project Mobilisation Risks

4.4.1 We have identified a number of new Project Mobilisation and COVID-19 risks and proposed mitigation which are listed in Appendix 1.

### **5. ALTERNATIVE OPTIONS CONSIDERED**

5.1 Alternative options considered are set out as follows:

Option 1 - Continue with 1st July 2020 transfer of cleaning services taking into account the identified risks and mitigations. Considering the timescales and pressure on existing resources, this option is not recommended.

Option 2 - Re-tender for contract. This option is considered to be viable and also a cost effective way to move forward in the short term. However, taking into account the benefits of insourcing for the long term and also for the community, this option is not recommended.

### **6. REASONS FOR RECOMMENDATIONS**

6.1 It is recommended that due to the risks identified in this report and further unknown COVID-19 implications that the option to extend the current Cordant contract for a period of 6 months with a break clause at 3 months is taken forward. A revised transfer date of 01/10/2020 would be the new target date.

## Appendix 1

Project Work Stream Risks	Mitigation	RAG
<b>HR (TUPE)</b>		
<b>Consultation – SCC FM staff</b> Inability to undertake effective consultation with directly/indirectly affected SCC FM staff	Utilisation of work/personal email addresses to provide project updates and ‘need to know’ information. Opportunity to use conference call facilities to talk through impacts/training directly with SCC employees.	
<b>Consultation - Cordant Transferring staff</b> Inability to have access to Cordant staff for engagement, consultation purposes and ELI validation requirements.	Utilisation of personal email addresses, telephone and postal channels to consult with transferring staff rather than one 2 one sessions.	
<b>Employee Liability Information</b> Inaccurate ELI information received from Cordant and significant elements outstanding	Consideration as to whether the Council’s terms can be used to fill key gaps. Formally write to Cordant identifying inaccuracies and outstanding requirements.	
<b>Payroll/Establishment</b> Inability to set up the transferring staff onto SCC establishment and payroll due to resource pressures and inaccurate/non validated ELI information.	Use Cordant issued payroll details and validate with transferring employees during first two weeks of Go Live to ensure reduce first month payroll issues.	
<b>Right to Work Checks</b> Inability to undertake RTW checks to ensure compliance with Government Regulations.	Finalise RTW documentation and checks after transfer – Cordant have carried out themselves	
<b>Health and Safety</b>		
Inability to complete Risk Assessments & Method Statements prior to Go Live	Obtain current Cordant RAMS and adjust for SCC requirements	
Inability to deliver SCC H&S training prior to Go Live	On line training videos and workbooks to be produced to allow demonstrable learning has taken place	
<b>Management &amp; Supervision</b>		
FM MER process not complete prior to Go Live	Create fixed term Cleaning Manager post to lead transition of service from mobilisation to BAU position	
<b>Training and Development</b>		
Inability to deliver full training plan identified due to SCC resource and transferring staff availability	Critical training to be delivered by videos and workbook. Remainder to be completed after Go Live	
Inability to deliver IT training due to unknown timescales of tablet delivery	Training paused until tablets delivered and set up – See IT risk below	
<b>IT – Big Change System</b>		
Inability to build, configure and fully test the tablet before Go Live due to ICT resources being deployed elsewhere	Manual workaround to be identified and used to manage work scheduling, time recording, annual leave and sick leave.	
<b>Machinery &amp; Equipment</b>		
New machinery and equipment not received in time for Go Live and training dates	Purchase/loan existing machinery from Cordant	
<b>Chemicals</b>		
Chemicals not received in time for Go Live and training dates	Utilise existing Cordant chemicals, obtain COSHH data sheets and produce appropriate RAMS. Identify additional	

	supply chains.	
<b>Uniform/PPE</b>		
Inability to confirm uniform/PPE sizes and ability to provide sizing samples to transferring staff	Request existing sizes from Cordant and review changes post Go Live	
PPE/Liveried uniforms not received in time for Go Live	Employees to retain Cordant uniform and PPE until SCC orders received. Ensure SCC RAMS reflect Cordant PPE	
<b>Communications</b>		
Inability to deliver full communications plan due to Communications Team prioritising COVID-19 work.	Identify service critical communication and use appropriate channels to deliver. Issue non critical communications post Go Live	