

18 April 2013		ITEM: 9
Standards and Audit Committee		
THURROCK COUNCIL HOUSING REPAIRS AND MAINTENANCE SERVICE		
Report of: Councillor Val Morris-Cook, Portfolio-Holder for Housing		
Wards and communities affected: All	Key Decision: N/A	
Accountable Head of Service: Kathryn Adedeji, Client Contract Manager		
Accountable Director: Barbara Brownlee, Director of Housing		
This report is Public		
Purpose of Report: Summary report of the transfer of service provision from Morrison Facilities Services (MFS) to Mears Ltd		

EXECUTIVE SUMMARY

The Council’s housing repairs partnership with Morrison Facilities Services (MFS) did not produce the service improvements expected, particularly in the area of customer satisfaction. The contract did not contain an easily enforceable exit clause in the Council’s favour and had the Council decided to terminate, Morrison would have claimed compensation, potentially amounting to between £2 and £5m

From April 2012 the Council strengthened the management of the MFS contract. The requisite improvement notices were issued based on measurement of performance and quality inspections undertaken between May and August 2012. In November 2012 MFS was purchased by the Mears group. Mears reviewed the quality of the notices and MFS’s performance and the growing strength of the Council’s position. Mears offered to terminate the MFS contract and start a new interim contract under Mears Ltd from February 1st. This will last for around 12-15 months to allow the re-procurement of a new long term repairs partnership.

The Council’s team have successfully concluded the termination of the MFS contract with no compensation payable. A new contract has also been agreed with Mears so that service to residents will continue. The actual amount due to MFS cannot be finally determined until the final account for work undertaken to January 31st is received. The target date for this is February 28th and it has been agreed that the final account will not be exceed £4.1m The Council has retained a right of audit with a maximum potential adjustment of £400k

Work to start on the delivery of the new long term repairs partnership will begin soon. The Council has an opportunity to learn from previous mistakes and will seek a

new contract with enhanced customer involvement, making a contribution to the local economy and with staff fully engaged. The target date to have a new long term contract in place is April 2014.

1. RECOMMENDATIONS:

1.1 For the Committee to note the contents of report.

2. INTRODUCTION AND BACKGROUND:

2.1 Thurrock Council (TC) entered a partnering contract with MFS on or around August 2010 for the delivery of response repair services and voids for the council's 10,300 homes. This contract was for an initial 5 year term, with the potential to extend by up to a further 10 years.

2.2 The partnership with Morrisons Facilities management (MFS) did not deliver expected customer service benefits, with complaints at an unacceptably high level requiring significant resources to manage and resolve. Additionally disputes arose as to the entitlement of MFS on the close out costs from the start of the contract to March 2012. This was settled competitively with the support of legal advice.

2.3 In summary, the partnering contract with MFS did not contain a unilateral termination provision. Termination for poor performance was tackled on a complex and lengthy calculation of KPIs supplemented with improvement plans to be submitted, reviewed and then improvement monitored. It is acknowledged that TC's management of the contract and performance measurement could have been stronger until into the 2012/13 year. Core Groups, the main delivery forum for the contract, were not held sufficiently frequently and actions recorded. Thus no realistically viable performance data existed or was recorded in Core Group meetings to enable TC from invoking the cumbersome contract exit process.

2.4 Preliminary discussion with MFS about a mutually agreed termination was undertaken by the Chief Executive, the TC transformation team and subsequently by the current Director of Housing's management team. The MFS position was that they would potentially agree to a termination but would require significant compensation for loss of profit and other costs involved in demobilisation and the loss of opportunity to undertake the extended term.

2.5 Amounts for compensation were not formally tabled by MFS but were initially proposed by MFS at around £5m. Clearly this was not a position the council could entertain.

3. MANAGEMENT RESPONSE:

- 3.1 The council strengthened the management of the contract from April 2012. Performance measurement was undertaken and recorded to comply with the contract performance indicators. Core Group management and recording was tightened and a specific resource employed to carry out contract and service quality audits which had not been undertaken in any meaningful depth to date.
- 3.2 An independent customer satisfaction survey was implemented which clearly showed MFS under performance. A log was compiled on the number of repairs falling out of time and forming a back-log and a further resource employed specifically targeting quality inspections. The contract required performance to be measured and recorded over at least a three month period before relevant notices could be issued for under performance. This was undertaken in depth between May and August 2012.
- 3.3 By August 2012 the council felt in a position to issue a notice for an improvement plan which MFS contested and requested to be withdrawn. The council also issued formal notice that the contract would not be renewed after its initial 5 year term. Thus, by September, the council felt in a strong enough position to start what would still have been a lengthy process towards a potential termination but with a potential termination from April 2013. At this time MFS were willing to discuss termination but at a revised compensation figure tabled informally at around £2m.

4. THE POSITION WITH MFS AND MEARS

- 4.1 In November 2012 Mears plc purchased MFS. Mears are a well known repairs service provider and reviewed the position with the MFS contract including assessing the strength of the notices and performance information that the council had placed with MFS. MFS continues to trade within Mears plc as MFS.
- 4.2 Mears have elected to continue with all but two of the MFS contracts, the Thurrock contract being one of these two. The rest are run by MFS under Mears plc. Mears reviewed the position with Thurrock and concluded that, given the growing strength of the council's position, early termination was an option as TC would potentially be able to terminate later in 2013 in any event. Mears made an offer to terminate the contract with MFS and this was agreed by cabinet on 12th December 2012 with an interim contract to be awarded to Mears.
- 4.3 The early termination was subject to there being no claim for compensation from MFS but that close down costs would be treated fairly. It was also agreed that an interim contract would be agreed with Mears and that an interim arrangement would have 'robust contractual arrangements in order to protect the Council in the provision of the repairs service'. This process and financial parameters are summarised in sections 5 and 6 so that Members can be

advised of the stance taken on close out costs and the management of a final account settlement with MFS.

5. THE COMMERCIAL POSITION WITH MFS

- 5.1 Neither Mears nor MFS were (understandably) prepared to enter an interim contract on new terms without settling the terms for the exit from the old MFS agreement. This gave a tight timescale from mid-December to January 31st to agree exit and new contract conditions.
- 5.2 Initially, contrary to the agreement to exit without compensation, MFS tabled an initial claim of £1.2m to exit including loss of profit and demobilisation costs. The council rejected this and Mears stood by the agreement reached with the Director of Housing that the exit should not cost the council anything above that owed for work carried out. . The only other costs to be paid to Mears are agreed to be the cost of vehicles and premises should Mears not be successful in the re-tender of the repair contract. These items will be limited to costs incurred over the original five year term and are considered to be verifiable.
- 5.3 It was not possible to conclude a final account with MFS given that work would be continuing until January 31st and possibly beyond to complete outstanding orders and attending to defects and recalls. It was possible that the council be left exposed when new terms had been agreed including prices, for the new contract but a final exit ceiling not agreed for the old one.
- 5.4 There was also the question of the potential for adjustment of amounts due as a result of the stronger audit regime for invoices already submitted by MFS or still to be submitted for the period to January 31st 2013. MFS presented a settlement agreement draft which required a waiver of all rights to implement any audit adjustment on MFS's service delivery. This was not a concession the council team was prepared to offer.
- 5.5 The expected outturn for the MFS contract was reported at *£5.4m*. On a straight pro-rata basis the amount due to MFS would be around *£4.5m* subject to any audit. This would have been a concession in the view of the council's team as it would have not taken account of the repairs not undertaken by MFS and building into a backlog which would have had to have been undertaken and charged by Mears
- 5.6 Improved repairs service monitoring has allowed the quantification of the backlog and this was estimated at *3,000 repairs* with a potential cost of *£225,000*. This should be reflected in amounts finally due to MFS and it has been agreed that a cost ceiling of *£4.1m* will be placed on the MFS final account with a potential for the council to adjust this figure by a maximum of *£400k* in audit processes.

5.7 A formal settlement has been agreed and signed and a summary of the key terms are:

- MFS must submit a fully documented final account by 28th February
- The council and MFS have 20 working days (unless both parties agree to a longer period) to conclude audit matters and agree a final account
- If this cannot be agreed the dispute to be referred to mediation
- The council will not raise new audit topics not raised to date
- No payment for any works raised before March 31st 2012 (as these were paid for in the 2012 outturn settlement)
- MFS are released from the parent company guarantee
- Thus the maximum payment by TC for all services by MFS to January 31st will be £4.1m but this could be reduced to £3.7m if audit observations result in the full potential final account adjustment

6. THE POSITION WITH MEARS

6.1 The cabinet report of the 12 December 2012 required robust contractual arrangements to be put in place and required other matters to be included such as quality of workmanship and not repeating the same error as for the last contract by not including a termination provision in the Council's favour after due notice.

6.2 A formal interim contract has been concluded, with the assistance of external legal advice, based on an industry standard Term Partnering contract (TPC 2008 edition). This covers all aspects of the relationship with Mears. In spite of the short period to agree terms, payment provisions have been agreed based on openly declared site overhead management costs and repairs and voids works to be executed using the industry standard National Housing Federation schedule of rates. Repairs will be undertaken on a price per property basis with Mears taking some budget risk.

6.3 A new parent company guarantee has been concluded with Mears plc to replace the cancelled guarantee with MFS.

6.4 A summary of the primary terms of the contract is:

- Duration to April 2013 but flexible for the Council to extend should it need to
- Full insurance cover to indemnify the Council against damage to property
- Detailed process maps to ensure quality delivery and optimum integration with the Council's call centre
- The ability for the Council to exit the contract after 6 months have elapsed and after giving 3 months notice with no compensation payable
- A defined performance regime with realistic time scales to achieve KPIs
- Continuation of the independent customer satisfaction survey so that the customer experience can be recorded and improvements or otherwise noted.

- An audit and inspection regime built into the contract and resourced from the start of it

7. NEW PROCUREMENT

- 7.1 The contract with Mears is only an interim provision and, whilst robust, will need to be replaced to ensure the council complies with EU governance legislation and to provide a higher level of business certainty for TC and its new service provider.
- 7.2 The planning for this process will start quickly and a project team formed to deliver it. It is expected that around three months of planning will take place to shape the new contract and seek to ensure it meets the council's needs. Key features will be:
- Getting sign up by staff who will manage the future contract and involving them in the procurement process via relevant project team members.
 - A contract not just decided by lowest price, as was the case with MFS but where quality and customer service counts
 - Opening the potential for resident involvement
 - Maximising the use of local business where this is best value to do so
 - Maximising the contribution to education and training and employment locally.
- 7.3 The aim will be to have this contract in place by April 2014.

8. ISSUES, OPTIONS AND ANALYSIS OF OPTIONS

- 8.1 Morrison's repairs and maintenance performance together with the unreasonably high level of customer complaints regarding the service meant that positive intervention by the Council was necessary to resolve the performance issues and ensure a good quality and value for money repairs service going forward. Doing nothing was not an option.
- 8.2 The Council strengthened the performance management arrangements on the contract and collated the necessary performance information to enable formal engagement with the contractor (and subsequently their purchasers, Mears) to resolve the performance issues and to minimise the risk exposure to the Council and to progress formal termination of the contract if necessary.
- 8.3 External legal advice was taken to explore the options available to the Council and to progress matters with MFS and Mears. Through these discussions it was established that a negotiated settlement and exit would be more beneficial than a formal termination due to the complex termination provisions within the contract. Nonetheless, the Council also instigated strengthened management arrangements to enable a formal termination of the contract if a negotiated settlement and exit could not be agreed.
- 8.4 Following negotiations with the parties it has been agreed to terminate the contract with MFS, appoint Mears on an interim basis to deliver the response repairs and maintenance service prior to formal procurement of a long-term

contract for the service by April 2014. This outcome has enabled the continuation of the repairs and maintenance service, improved performance, appropriate management arrangements and limited cost exposure for the Council that can be absorbed by the HRA.

9. REASONS FOR RECOMMENDATION:

9.1 N/A – to note the contents of the report.

10. CONSULTATION (including Overview and Scrutiny, if applicable)

10.1 This report was discussed at Housing Overview and Scrutiny in 13th March 2013.

11. IMPLICATIONS

11.1 Financial

Implications verified by: **Michael Jones**
 Telephone and email: **01375 652772**
mxjones@thurrock.gov.uk

The potential maximum liability payable to MFS is £4.1m with a potential adjustment of £400k in the Council's favour. The repairs budget within the HRA has allowed this amount as part of the year end forecast and that there are sufficient financial resources within the HRA to cater for this.

11.2 Legal

Implications verified by: **Assaf Chaudry, Major Projects Solicitor**
 Telephone and email: **01375 652201 or 020 8724 8459**
assaf.chaudry@bdtlegal.com.uk

There are no direct legal implications arising from this report, however any new procurement must be procured in accordance with the Council's Contract Procedure Rules contained within the Constitution.

11.3 Diversity and Equality

Implications verified by: **Samson DeAlyn**
 Telephone and email: **01375652472**
sdealyn@thurrock.gov.uk

There are no equality or diversity implications noted in this report.

11.4 Other implications (where significant) – i.e. Section 17, Risk Assessment, Health Impact Assessment, Sustainability, IT, Environmental

n/a

BACKGROUND PAPERS USED IN PREPARING THIS REPORT (include their location and identify whether any are exempt or protected by copyright):

- n/a

APPENDICES TO THIS REPORT:

- n/a

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