

CHILDREN & YOUNG PEOPLE CABINET MEMBER SPECIAL MEETING

Agenda Item 46

Brighton & Hove City Council

Subject:	Removal of Soft Services from the Schools PFI Contract		
Date of Meeting:	22 March 2010		
Report of:	Director of Children's Services		
Contact Officer:	Name:	Gil Sweetenham	Tel: 29-3474
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Key Decision:	Yes	Forward Plan No: CYP14971	
Wards Affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report is complemented by a separate report and appendices in Part 2 of the agenda.
- 1.2 Brighton & Hove City Council entered into a 25 year Private Finance Initiative (PFI) Agreement on 8th March 2002 with Brighton & Hove City Schools Services Ltd (BHCSS). The Agreement includes the provision of Facilities Management Services (FM) through BHCSS to Dorothy Stringer High School, Varndean School, Patcham High School and the Patcham Stakeholders (Community Centre, Library, Youth Centre and Patcham Junior School (catering only)). BHCSS sub-contracted with Jarvis Accommodation Services (JAS) to provide FM services.
- 1.3 JAS submitted a benchmarking price increase claim in October 2008. The initial financial proposals submitted by JAS were rejected by the council and schools. Under legal advice the council entered into "Without Prejudice" discussions with BHCSS to try and reach agreement. These discussions were completed on 11th November 2009.
- 1.4 The discussions have only been able to conclude one proposal worthy of the schools' and Patcham Stakeholders' consideration. This proposal is the removal of soft services (cleaning & waste, site and grounds maintenance, and catering) and third party income (TPI) from the PFI Agreement. JAS would continue to provide building maintenance services, as detailed in the Heads of Terms Agreement included in a separate report and appendices in Part 2 of the agenda.

2. RECOMMENDATIONS:

- 2.1 That the Cabinet Member agrees to the removal of Soft Services from the PFI agreement with BHCSS with effect from April 2010.
- 2.2 That the Cabinet Member agrees to the removal of third party income from the PFI Agreement with BHCSS with effect from April 2010.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The PFI agreement makes provision for either contracting party to carry out a benchmarking review every five years starting 31st March 2008. This exercise benchmarks the soft service charges against market rates for the provision of similar services to similar output specifications. It is intended to ensure that the Council is paying and that the PFI provider is being paid a fair market price. The results of the benchmarking exercise determine if there should be an increase or decrease to the charges levied. The PFI agreement details procedures to be followed if either party elects to carry out benchmarking.
- 3.2 Benchmarking is not intended to, or designed to, address the PFI provider's failure to deliver the services to the stated output specification. Failures to achieve the output specification are addressed through the pay and performance mechanism by way of financial deductions (SFD).
- 3.3 Over the last eighteen months the council, schools and BHCSS have invested in putting in place appropriately skilled resources and robust governance and contract management processes to ensure the effective day to day management of the PFI agreement and delivery of services. Service standards have improved; however the quality of JAS contract management remains a significant concern.
- 3.4 BHCSS submitted a price increase claim in October 2008 which was subsequently rejected by the council and schools as BHCSS failed to follow the benchmarking procedures as detailed in the PFI Agreement. Under legal advice the council entered into "without prejudice" discussions with BHCSS to try and reach agreement. These discussions concluded on 11th November 2009.
- 3.5 In order for both parties to effectively manage the service provision going forward, three issues need to be resolved; (a) benchmarking, (b) variations and (c) room data sheets (RDS).
- 3.6 For benchmarking, two basic options have been discussed:
 - (i) the removal of soft services including TPI from the PFI Agreement with JAS continuing to provide building maintenance services;
 - (ii) an agreed increase in charges for the provision of the current services to the existing output specification.

The Council requested that within both options JAS include proposals for also resolving variations and room data sheets. Under the without prejudice discussions to date it has been possible to finalise a proposal for option (i) but not option (ii).

- 3.7 Currently services for Patcham Stakeholders are provided by the same JAS team that supports Patcham High School. Under option (i) economies of scale could be achieved by Patcham High School providing the FM services to Patcham Stakeholders.
- 3.8 Should agreement not be reached then the PFI Agreement provides for either party to instigate legal proceedings through implementing the Dispute Resolution Process (DRP) which is likely to increase costs to schools considerably.

4. CONSULTATION

- 4.1 Discussions were held over a period of nine months with:
- School Headteachers, Chairs of Governors and Business managers culminating in the Without Prejudice and Variations Report dated 16th November 2009 (Appendix 2) presented to the Brighton & Hove City Council PFI Steering Group (Director CYPT, PFI Schools Headteachers and Schools Futures Project Director).
 - council officers including the Legal and Finance teams.
 - Partnership for Schools (PfS) and advice sought from Pinsent Mason, the external lawyers who acted for the council at the time the PFI Agreement was entered into, regarding the potential variation of the existing PFI contract.
- 4.2 The Schools have indicated their support in principle to adopting the removal of soft services and TPI from the PFI agreement.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 *Key financial terms*
- 5.1.1 The option to remove soft services from the PFI contract is considered the best financial option available. The key financial terms negotiated are summarised in Part 2 of this report which includes full details in Appendix 3.
- 5.1.2 In addition BHCSS will
- update the room data sheets to reflect the current buildings status, fixtures and fittings at no cost to the council or schools.
 - contribute towards the estimated legal, financial and technical costs associated with making these PFI Contract changes.
 - any outstanding invoices that the schools have with BHCSS for wilful damage, school lets, hospitality and any other agreed ad hoc services will be settled by the schools prior to the transfer of soft services.

- 5.1.3 Staff directly employed by JAS at each of the schools to deliver the Site Management and Catering Services would be transferred to the direct employment of the schools under TUPE.

Impact in 2009/10

- 5.1.4 Agreement has been reached for the schools to amortise the increase in 2009/10 over the remaining years of the contract to minimise the impact on school budgets in the current year.

Impact in 2010/11

- 5.1.5 The gross charge in 2010/11 to the schools is higher than previously projected but substantially below that if benchmarking had been agreed. The schools have confirmed the increase can be funded from within existing resources.

Finance Officer Consulted: Peter Sargent

Date: 16/02/2010

Legal Implications:

- 5.2 The legal implications of the recommendations and the background thereto are integrated into this report and the separate report in Part 2 of the agenda and generally the proposals amount to reasonable exercise of the council's discretion in respect of seeking changes to the ongoing position under the Schools PFI agreement.

Lawyer Consulted: Bob Bruce

Date: 04/01/2010

Equalities Implications:

- 5.3 There are no equalities implications arising directly from the report.

Sustainability Implications:

- 5.4 There are no sustainability implications arising directly from the report however schools feel that the variation of the contract will enable them to be better placed to adopt sustainable measures in the future.

Crime & Disorder Implications:

- 5.5 There are no crime and disorder implications arising directly from the report however schools feel they will be able to offer increased pre and after school activity than that provided by JAS through the present contract.

Risk and Opportunity Management Implications:

- 5.6 It is important that this opportunity is taken to ensure the future provision of learning and teaching, and continuing improvement in standards of education in the city.

Corporate / Citywide Implications:

- 5.7 Issues attribute to our existing PFI agreement have been a corporate concern for a number of years. The proposed variation to the existing contract will remove a number of elements that have led to particular concerns.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 This paper presents the only option for beneficial change to have been agreed with our PFI providers.
- 6.2 Options for the council to terminate the PFI agreement or to purchase BHCSS have been investigated and not progressed. The high charges associated with termination and purchase plus likely significant compensation payments to BHCSS and JAS result in these options not offering value for money. Analysis is shown in Appendix 1 of the Part 2 report

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 To resolve a number of long-running issues with the existing PFI agreement for Dorothy Stringer High School, Varndean School, Patcham High School, the Patcham Stakeholders (Community Centre, Library, Youth Centre and Patcham Junior School (catering only)).
- 7.2 To ensure the inclusion of our three PFI secondary Schools within the Building Schools for the Future programme.

SUPPORTING DOCUMENTATION

Appendices

1. None

Documents in Members' Rooms

1. None

Background Documents

1. None

