

**DRAFT UNRESTRICTED MINUTES OF A MEETING OF THE CABINET
PROCUREMENT COMMITTEE**

MONDAY 15 FEBRUARY 2021

Chair	Cllr Deputy Mayor Rebecca Rennison in the Chair
Councillors Present:	Councillors Deputy Mayor Anntoinette Bramble, and Cllr Caroline Woodley
Also in attendance:	Councillors Chapman, Kennedy
Apologies:	nil

Officers in Attendance	<p>Mr Rotimi Ajilore – Head of Procurement Ms Denise De’Souza - Interim Group Director Adults, Health and Integration Ms Dawn Cafferty – Category Lead Social Care Ms Judith Hughes – Category Lead – Corporate Ms Candace Blomfield - Category Lead -Category Lead (Construction and Environment) Mr Patrick Rodger - Senior Lawyer – Procurement - Legal & Governance Ms Sharon Ellis -Strategic Commissioner - OP and LTC Mr Stuart Thorn - Interim Head of Human Resources Mr Roger Pellew - Human Resources Consultant Mr Clive Sheldon - Procurement Lawyer - Legal & Governance Ms Anisah Hilali - Procurement Lawyer - Legal & Governance Ms Jade Mercieca -Strategic Procurement Manager (Interim) Central Procurement Team Ms Merle Ferguson - Procurement Strategy & Systems Lead Mr Clifford Hart – Senior Governance Services Officer – Legal & Governance</p>
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There were no apologies for absence.

The Chair welcomed Councillors Chapman and Kennedy to the proceedings in lieu of their pending appointments to the Committee from 22 February 2021.

NOTED

2 Urgent Business

There were no items of urgent business.

NOTED

3 DECLARATIONS OF INTEREST - Members to declare as appropriate

There were no declarations of interests.

NOTED

4 NOTICE OF INTENTION TO CONDUCT BUSINESS IN PRIVATE, ANY REPRESENTATION RECEIVED AND THE RESPONSE TO ANY SUCH REPRESENTATIONS

There were no representations.

NOTED

5. TO NOTE THE REVISED TERMS OF REFERENCE OF CABINET PROCUREMENT COMMITTEE

The Chair advised the meeting that the revised terms of reference detailed at point a variation to include the consideration of issues relating to the Council's insourcing ;policy. The Committee was therefore asked to receive and note the revised terms of reference of the Cabinet Procurement Committee.

RESOLVED

That the revised terms of reference of the Cabinet Procurement Committee be received and noted.

6. DEPUTATIONS/PETITIONS/QUESTIONS

There were no deputations, petitions or questions.

NOTED

7. DRAFT UNRESTRICTED MINUTES OF THE CABINET PROCUREMENT COMMITTEE HELD ON 18 JANUARY 2021

RESOLVED

That the unrestricted minutes of the meeting of Cabinet Procurement Committee held on 18 January 2021 be confirmed as an accurate record of the proceedings.

8. Provision of extra care for Limetree Court and St Peter's House - Contract Award - Key Decision No. CACH R 41

The Chair asked for a brief introduction of the report.

Ms Sharon Ellis -Strategic Commissioner - OP and LTC - advised that the report circulated sought approval for the award of contract for the provision of extra care services at Limetree Court and St Peter's House in the London Borough of Hackney., with both schemes purpose built high specification demonstrating the Council's commitment for local residents to maintain their own tenancies. Both schemes were designed using the HAPPI standards (housing for ageing population) and St Peters in particular for residents living with dementia.

Ms Ellis further advised that the contract award demonstrated the Council's commitment to supporting residents to stay independent for as long as possible - and this also supported cost avoidance as it would avoid the need for individuals to be placed in more expensive residential care settings.

The Chair thanked Ms Elis for her response and sought any points of clarification or comments from the Committee.

Deputy Mayor Bramble, in welcoming the report and its proposals, in reference to the contract award for a two year stretched contract, sought clarification on the issue of possible insourcing at the point of the contract's end. In response Ms Elis advised that the current in house housing with care provision review as detailed in para 5.4 of the report, would run in

tandem with this project and that the contract would be taken account of as part of that review to look at the possibility of an in house provision. The Housing with Care provision currently managed some 14 care services, and Ms Ellis advised that as part of the review she and others would be looking at all elements to advise on the possibility of future insourcing .

The Chair in thanking Ms Ellis for the confirmation advised that as part of the insourcing agenda, that officers should ensure that all avenues were explored when reviewing the contract with clear sight in terms of insourcing of this provision.

In welcoming the direction of the report Councillor Woodley commented on the need/assurances of clear monitoring of the contract and ensuring its effectiveness. In response Ms Ellis advised of quarterly reviews of the contract by herself a lead commissioner and the quality of care element of the contract and the number of calls/unplanned calls in particular - as whilst there were a number of planned calls, there were times in the 24 hours care period when there may well be unplanned care calls by residents /alarms triggered, and the frequency of these and support, which as an element of the contract would feed into the issue of insourced provision.

Ms Ellis added that as part of the monitoring of the provision there were regular contract meetings with the provider to pick on any particular issues and general concerns, and action plans provided to tackle issues immediately

With the permission of the Chair Councillor Chapman sought clarification as to whether the contract extension after two years would automatically happen for a further year, given the desire to have the service provision insourced where possible. In response Ms Ellis confirmed that the contract would not automatically be extended beyond the two years and that the issue of how the contractor had performed would be assessed. It was also the case that the extension would be subject to how the current housing with care review was progressing and whether at that point it would be possible for the services to be in a position to be insourced.

In further clarification from Councillor Chapman of the extension of the contract and approval for this by CPC, the Chair asked that the Head of Procurement give a brief comment. Mr Ajilore responded that as with the recommendations before the Committee it was at the point this evening that the Committee would agree the contract let as detailed and that there would be no requirement for the matter to come back to the committee. There may be a possibility that at the two year point the issue of insourcing had been sufficiently explored with recommendations coming back to CPC to that effect.

The Chair also referred to the reference to the proposed savings as detailed within the report and sought and was given reassurance from Ms Ellis that the proposed savings would not impact on quality of service and guaranteed that this was the case as advised within the report.

The Chair added that where in the past similar schemes had been given approval there was an agreement that an information/follow up report was submitted which detailed progress after a twelve month period, and the

Chair advised that she would add this as a recommendation when moving the report.

The Chair asked Councillor Kennedy if he wished to comment on his report.

Councillor Kennedy commented that he had nothing further to add and welcomed the proposals before the Committee, and in noting the comments regarding insourcing provision, advised that he would be working closely with officers to explore all aspects of the proposals to ensure where possible the contract came in-house.

In response to further points of clarification from the Chair as to how the service had arrived at the proposals Ms Ellis advised that the provider had been extremely responsive during the current pandemic crisis and had offered excellent support in a timely fashion and ensuring a quality service provision. As a result officers were confident that the contract award would be well managed and monitored and the service provision would be maintained.

There being no further points of clarification, on a **MOTION** by the Chair it was:.

RESOLVED:

- i. That approval be given to awarding the tender the for Extra Care services at Limetree Court and St Peter's House to Provider A, for a duration of two years, retrospectively commencing on 1st April 2020, with the option to extend for a further 1 year; and**
- ii. that officers report in approx 12 months (February 2022) on progress with the implementation of the contract in terms of performance and progress.**

RELATED DECISIONS

The first business case was signed off by the Director of Adult Services, Childrens, Adults, and Community Health Directorate, on 3rd May 2019. Key decision Ref CACH Q26

REASONS FOR DECISION/OPTIONS APPRAISAL.

In 2012/13, at the request of the Council, Family Mosaic (who merged with Peabody Trust and is now known as Peabody) was asked to apply for a capital grant of £4m from the (then) Homes and Communities Agency to redevelop two of their sites to create Extra Care services. The Council then agreed to fund a further £300k in capital costs to ensure that the new service was designed specifically for residents with dementia and mental health issues. This was on the understanding that these services would assist in delaying or preventing the need for residential care and avoiding costs to health and social care services. This became the St Peter's House site. Separately, Hanover (who merged with Anchor Trust and is now known as Anchor Hanover) had also developed

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Limetree Court as a purpose built scheme and that presented an opportunity for Extra Care provision in both buildings to be delivered by one provider.

Extra Care Housing is housing designed with the needs of frail, older people in mind, with varying levels of care and support available on site. People who live in Extra Care Housing have their own self contained homes, their own front doors and a legal right to occupy the property. This type of provision means that people can retain their independence for longer, delaying and often completely avoiding the need for residential care. This model promotes the Council's vision to promote independence and to ensure that people are valued members of their community. This model also avoids higher cost placements in residential care.

Provider A has been delivering care and support at both schemes to date, on an interim basis. There are 43 flats for residents that are aged over 55 and with a care need. Facilities include a residents' lounge, guest room and laundry, plus attractive maintained gardens. An estate manager looks after buildings and grounds maintenance and repairs, as well as assisting residents to access further help and support if required. St Peters House has been designed for older people living with dementia, with 13 of the flats specifically assigned for people with care needs.

Before the pandemic, the medium to long term aim of the Council was for care at both schemes to be considered insourcing through delivery by the Council's Provider Services team in Adult Social Care. Currently, the Council is not in the position to undertake this objective as the service is being reviewed, particularly in response to recent CQC inspections. There are also a number of other factors outlined in this report (see 5.9).

In 2019, an open tender process was undertaken in order to select a suitable agency for three years to provide care and support across both settings on an ongoing basis until the Council was ready to in-source the delivery of care at both schemes.

The winning bid was significantly lower than the majority of other bids and this was interrogated and the contract awarded. However, the decision was challenged and further analysis revealed that the London Living Wage was not systematically applied across the bid and in consultation with legal colleagues, the bid was disqualified.

Following this, the Council took the opportunity to revisit the model and explore further innovation in the context of wider strategic objectives and the initial preferred commissioning option, which was for the provision of care services to be delivered by the Council's in-house Provider Services team.

As mentioned above, this preferred option could not be the immediate option due to the service's CQC inspection rating "Inadequate". While the department undertook a series of actions to rectify and improve their rating, at the time of the tender process, there was a re-inspection of the service. The rating improved to "Requires Improvement", which meant there were still some areas in the service that needed further work. The provider at Lime Tree Court and St Peters currently has a good CQC rating and has worked well with the Council.

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The current CQC rating gives the Council some reassurance that the quality of care and support provided at these two schemes are of a good standard.

The outbreak of Covid-19 and the necessity to ensure the continuity of wider and urgent social care services has severely impacted this ambition with teams diverted to support care homes, those who are shielding and infection control. The situation is further exacerbated by the cyber attack which has impacted Council IT systems. The directorate is not currently able to put this service out to tender; the contract award enables stability of provision and continuity of staff and care for residents at a time of great change and uncertainty.

The pandemic has also delayed the overarching Housing with Care service review, which this service contract is aligned to. The Housing with Care Service review is an integral piece of work that needs to be carried out to explore how, if and when the in-house Provider Service Team could possibly deliver the care at Lime Tree Court and St Peters.

This review seeks to identify £1m. of savings over a two year period - 2021 to 2023. This saving target is part of the current saving programme for Adult Services.

The review itself has also been further complicated by the recent cyber attack on the Council which has meant that the data that would have been used to feed into the review is not currently available.

These factors impact our ability to review this service quickly. The current contract ended in March 2020. It is therefore requested that this contract award via direct negotiation, applies until at least 31st March 2022, with the ability to extend for up to a further 12 months to 31st March 2023 (i.e. Covid-19 pandemic and the current cyberattack on the Council) in order to enable continuity of service for our vulnerable residents as well as the completion of the Housing with Care service review as outlined above. This timeframe should also allow the department to fulfil its commitments to achieve savings and fully explore the possibility of the care provision being insourced and delivered by our Provider Services team. If the situation is stabilised earlier, e.g. through effective vaccination, the contract will be terminated earlier and the provision either re-tendered or brought in-house.

ALTERNATIVE OPTIONS (CONSIDERED AND REJECTED)

Option	Update	Advantage	Disadvantage
i. Do nothing	The original STA has expired and cannot be further extended, therefore, this is not an option. A break in service is not acceptable as we cannot be without a care service in place for vulnerable residents	N/A	N/A

	at these schemes.		
ii. Open procurement for a single provider	A procurement process was undertaken but the contract award could not be implemented.	N/A	The requested contract duration has already commenced and the initial contract period proposed will finish in or around the timeframe it would take to undertake a re-procurement process and service implementation if awarded to a new provider. In addition, the timeframes against the new service to be brought in-house may deem the contract duration uneconomically variable for bidding providers. The complexity of the current situation, re: COVID, cyber attack on the council means that it is not the right time to go out to procurement. In particular, we need to ensure effective infection control at these sites (e.g. staff stability)
iii. Extend existing arrangement via negotiated procedure		<p>Enables continuity of care to be delivered to the residents at both schemes in the interim short-mid term; mitigates service disruption which re-procurement process</p> <p>Ensure effective infection control.</p> <p>Ensure staffing stability at time of pandemic.</p> <p>Extension period allows us to mitigate against further impacts of COVID - e.g. peak expected winter 2021/22</p>	Risk of challenge from providers who bid for the previous tender

9. Provision of Temporary Workers - Key Decision FCR R 6.

The Chair advised the meeting that recommendation 3.2 circulated within the original report would be deleted and the insertion of two new recommendations 3.2 and 3.3, which officers would refer to in their introduction. The Chair stressed that amendments to the recommendations did not affect the essence and intentions of proposals of the report.

The Head of Human Resources (Acting) - Mr Stuart Thorne, advised the meeting

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that the report before them proposed a procurement exercise to be carried out to appoint a managed service provider for the supply of agency and temporary staff which would ensure that the Council secured a service solution that was reflective of the changing needs of the business and the dynamic nature of the external market for skills and talents. Mr Thorne further advised that the procurement route proposed was to direct award via the Call-Off contract procured by the London Collaboration via Eastern Shires Purchasing Organisation (ESPO) Managed Service for Temporary Agency Resources (MSTAR) national framework for Agency workers. The report gave a detailed review of the options available for the provision of the service and sets out how the proposed route offers the best solution to meet our requirements over the forthcoming year, especially in view of the financial challenges the Council will face.

Mr Thorne further commented that the reason for the proposed 1 on 1 or further two year contract was due to the changing market, which was evident prior to the BREXIT and Covid situations, and since the awarding of the contract in 2016. The current contract was due to come to end in the summer of 2021 and there were no options to extend that contract - hence the procurement process as recommended, and that a two year type contract with options for variation by the Council was better than a tied in 4 year contract with less flexibility. This was coupled with the ongoing financial restraints placed on local authorities currently. The Council had therefore explored options for working closely with Hackney Works, and utilising local agencies /contract agencies suppliers and that it was the intention of the proposed contract to further this approach in the challenging times the Council found itself in.

The Chair thanked Mr Thorne for his succinct introduction, and asked if his colleague Mr Pellew had anything further to add.

Mr Pellew - Human Resources consultant - advised the meeting that the detailed exempt paper detailed the options for developing an insourced operation but as stated in that advice the Council was not currently in a position to explore this route as the Council did not have the ability to negotiate detailed terms with providers etc at this time. However officers would be working to see if this was something that could be proposed in the future.

The Chair thanked Mr Pellew for his comments and stressed that the report before the Committee was extremely detailed and set out clearly the path to date in terms of where the Council was in terms of the employment of temporary staff, and that the current situation as regards insourcing had been clear.

The Chair asked if there were any further comments.

Councillor Woodley commented that in terms of the general consensus view in terms of moving towards reducing the numbers of temporary staff it was recognised that that it was necessary in various areas of the Council to have highly and trained and qualified staff i.e. education and that temporary staff was necessary to ensure continuity of service provision. Deputy Mayor Bramble echoed these sentiments. The

There being no further comments the Chair MOVED that in respect of the recommendations before the Committee the following amendments to be agreed.

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- i. That the various options considered regarding engagement of temporary workers as detailed in the report be noted;
- ii. that approval be given to the procurement strategy detailed in the report, to appoint an Agency Staff Service Provider, by direct award process via the London Collaboration Call-Off contract awarded under the ESPO MSTAR 3 Framework; and
- iii. that approval be given to the appointment of Matrix SCM (the Council's incumbent supplier), as the Service Provider (Neutral Vendor), for an initial term of 2 years and with a provision to extend the contract for 1 + 1 years subject to satisfactory performance.

The amendment was carried nemine contradicente.

RESOLVED

- i. That the various options considered regarding engagement of temporary workers as detailed in the report be noted;
- ii. that approval be given to the procurement strategy detailed in the report, to appoint an Agency Staff Service Provider, by direct award process via the London Collaboration Call-Off contract awarded under the ESPO MSTAR 3 Framework; and
- iii. that approval be given to the appointment of Matrix SCM (the Council's incumbent supplier), as the Service Provider (Neutral Vendor), for an initial term of 2 years and with a provision to extend the contract for 1 + 1 years subject to satisfactory performance.

RELATED DECISIONS

A report considering the option of in-sourcing the procurement of temporary workers was produced for the Group Director, Finance and Corporate Services; it is attached as Exempt Appendix One.

OPTIONS APPRAISAL AND BUSINESS CASE (REASONS FOR DECISION)

The current contract for the provision of agency workers is due to expire on 10 July 2021 for the Council and 1 September 2021 for Hackney Education (formerly Hackney Learning Trust). Since the contract was let, the agency worker supply market for local government and public sector organisations has changed significantly. In view of the challenges posed by Fair Funding, Brexit and the recent COVID pandemic, it is a near certainty that austerity measures will be in place for the foreseeable future. In addition, the reduction in local government funding places pressure on the Council's ability to deliver services to the residents of Hackney. In view of this there is a need for the Council to continually review options for saving money, and it is appropriate to use the end of the incumbent's contract term as an opportunity to further seek improved value for money.

The Council has looked and continues to seek ways to reduce its expenditure on the supply of agency workers and improve supply rate to ensure directorates and service areas secure the right people to deliver their services. The fixed margins, no temp to permanent fees and tenureship fees has contributed to a reduction in spend. Some directorates have implemented processes to reduce agency spend, for example moving agency workers from temp to permanent and decision making panels on agency recruitment.

The current contract provides a neutral vendor solution wherein the principal (Matrix SCM) manages the supply chain of agencies. Matrix SCM is not an agency. Agencies that have enrolled in specific job categories, supply agency workers to the Council through Matrix SCM.

Following a detailed review of the current contract and drawing from lessons learned from the operation of the contract since 2017, it has been clear that the neutral vendor solution has been a more flexible contract, that combines the benefits of a single management arrangement with access to a broad array of talents that resides in the supply chains of generic, specialist, interims and education categories, than the master vendor arrangement under the previous contract which ended in 2017. The current contract allows managers to engage with the appointed service provider in a way that will ensure that they secure the workers they require using the appropriate route to the supply market as opposed to one size fits approach which has huge limitations. In addition, the continued master vendor arrangements with the incumbent for Environmental Operations has proven to be very successful.

The current contract has highlighted the importance of simplifying the contracting burden on the Council (i.e. we only contract with one principal rather than multiple agencies). The incumbent has demonstrated experience and capacity to manage the network of supply options, and has shown its ability to ensure that indemnities are back to back with a third party supply chain so that the Council has the right of redress directly through them. This has been successful, especially with changing the master vendor arrangements for Hackney Education.

There is no provision to extend the contract, but if necessary it can be mutually agreed with the incumbent supplier to extend the contract for a short period to allow the procurement process to be completed.

The options for future service provision have been explored and discussed in this report. The in-house option is unlikely to be cost effective relative to the neutral vendor model currently operated because of the fixed margins, expertise etc. A contracted partner has the advantage to be able to reduce the overall cost to the Council due to economies of scale, bargaining power and expertise in the market. Further exploration of the costs of the in-house option can be found in Exempt Appendix One.

ALTERNATIVE OPTIONS (CONSIDERED AND REJECTED)

The options considered are listed below:

- Do Nothing
- Insourcing
- Collaboration models
- Full OJEU Process
- External Framework
- Temporary recruitment delivery models

Do Nothing

This is not a viable option. The current contract expires in July 2021 and the Council requires agency staff, available on a flexible basis, particularly for specialist areas, to be supplied after that date.

Insourcing

The Council has the option to bring the service fully in-house. To do this would require the Council to TUPE the existing contractor workers, and if required in the future to align their wage/salary structure to Council pay scales with associated on-costs. A detailed analysis of the in-house option has been produced for consideration and is appended to this report as Exempt Appendix One.

Collaboration Models

With the continual focus on Local Authority cost savings, Commercial Services (Kent County Council) has provided an option to work with other local Authorities to efficiently implement a number of recruitment of temporary worker solutions through the Teckal, Hamburg exemptions or Section 95 models, or a blend of each. This model is in its infancy stage as only 1 County Council has so far adopted this model. This option, and the reasons for not utilising it, have been included in the in-house option analysis.

Full OJEU Process

A full OJEU process could be run to identify a new supplier. A procurement via a Restricted OJEU process would be time consuming - nine to twelve months, and the market is healthy so a large number of compliant bids would be expected. It would also be costly in terms of staff time and resources. Further, there is no guarantee that the rates provided under a full OJEU tender would offer better value than those offered in a Framework, the opposite may be true where the potential for multiple clients offered by a Framework may promote better pricing.

This option has been discounted as there are a number of Frameworks available which include a wide spread of agency staff suppliers and offer a shorter and EU compliant route to market.

External Frameworks

There are a number of external Frameworks available, which were reviewed to see if they could meet the Council's needs. A summary of the options is provided below:

Crown Commercial Services (CCS)

CCS manages a number of Frameworks around temporary recruitment, however these do not offer the Master Service Provider (MSP) model that the Council requires.

Yorkshire Purchasing Organisation (YPO)

The YPO Framework for Managing Temporary and Permanent Recruitment (942), launched in January 2020, does offer the MSP model required and a previous iteration of this Framework was used to procure our current supplier in 2016. Analysis and benchmarking of this Framework showed that whilst this is a strong option, the preferred route via the London Collaboration offers better value for money in terms of the fees and margins charged.

ESPO Managed Services for Temporary Agency Resources (MSTAR 3)

ESPO introduced their new MSTAR 3 framework in 2019, offering three lots including Managed Service Provision with both Neutral Vendor and Master Vendor options. The Framework is open to public sector bodies and YPO members are eligible for a financial rebate based on spend against the Framework. The Framework meets the Council's requirements for a Master Service Provider, and Neutral Vendor, and offers a strong and compliant solution. However, analysis of the rates and margins available under this Framework illustrated that, despite the potential rebate, the costs offered under the preferred option, provide better value for money for the Council.

10 . Information Item - Update in respect of the long term contract for provision of statutory, testing, inspection, repair, and maintenance services in preparation for competition and potential insourcing of service elements

Noted that the information report was not circulated due to officers being unable to meet the agenda publication deadline and will be considered by the Committee on 8 March 2021

10. ANY OTHER UNRESTRICTED BUSINESS THE CHAIR CONSIDERS TO BE URGENT

There were no items of unrestricted urgent business.

NOTED

11.. DATE OF FUTURE MEETINGS

NOTED – meetings of the Cabinet Procurement Committee commencing at 5.00pm for the remainder of the Municipal Year 2020/21 as follows:

8 March 2021
12 April 2021
11 May 2021

At this point in the proceedings Deputy Mayor Bramble advised that as this meeting would be the last Cabinet Procurement Committee Deputy Mayor Rennison would attend prior to her commencing maternity leave at the end of February, she placed on record her thanks on behalf of the Committee to Deputy Mayor Rennison for all of her hard work and effort, and wished her well during the next 9 months. The Sub-Committee and officers echoed the wishes virtually.

NOTED

12. EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED

THAT the press and public be excluded from the proceedings of the Cabinet Procurement Committee during consideration of Exempt items 13-14 on the agenda on the grounds that it is likely, in the view of the nature of the business to be transacted, that were members of the public to be present, there would be disclosure of exempt information as defined in paragraph 3 of Schedule 12A to the Local Government Act 1972 as amended.

SUMMARY OF EXEMPT PROCEEDINGS

13. Provision of Temporary Workers - Key Decision FCR R 6.

AGREED to note the exempt appendices in relation to agenda item 9.

14. ANY OTHER EXEMPT BUSINESS THE CHAIR CONSIDERS TO BE URGENT

There were no exempt items of urgent business.

NOTED

Duration of the meeting: 17:00HRS – 17:45HRS

Contact:

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