

Key Decision Report of the Corporate Director of Homes and Neighbourhoods

Officer Key Decision	Date: 13 January 2022	Ward(s): All
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SUBJECT: Procurement Strategy for Asbestos Air Testing and Surveys**1. Synopsis**

- 1.1 This report seeks pre-tender approval for the procurement strategy in respect of Asbestos Air Testing and Surveys in accordance with Rule 2.7 of the council's procurement rules.
- 1.2 This strategy is for a contract for a UKAS accredited asbestos air testing and asbestos surveying contractor in accordance with the Control of Asbestos Regulations 2012. Asbestos air testing is a regulatory requirement following asbestos removal and must be independent of the contractor who carried out the removal. In addition, asbestos surveys are a regulatory requirement and need to be carried out prior to repair, maintenance and construction works.
- 1.3 This strategy is for a collaboration contract for housing repairs and maintenance and the corporate asbestos team. A collaboration contract will offer greater value for money for the council and consistency across services.

2. Recommendations

- 2.1 To approve this procurement strategy for Asbestos Air Testing and Surveys as outlined in this report.
- 2.2 To take the decision to approve this strategy in consultation with the Corporate Director of Community Wealth Building.

3. Date the decision is to be taken:

13 January 2022

4. Background

- 4.1 The Council is intending to procure one contractor to deliver Asbestos Air Testing and Surveys.

Housing Stock

The Council has a housing stock of approximately 33,720 inclusive of leasehold properties and PFI2 properties due to return in April 2022. Asbestos air testing is required following asbestos removal and in some circumstances, where asbestos may have been inadvertently disturbed, to ensure airborne asbestos fibre concentrations are at acceptable levels and the property is fit for occupancy.

Refurbishment and demolition surveys are carried out to all void properties to identify areas that have asbestos containing materials and the removal of asbestos is then arranged for areas where asbestos may be in poor condition or to allow void refurbishment works to take place. Emergency surveys make also be requested on an ad-hoc basis for areas where suspected asbestos containing materials has been identified by repairs operatives.

Operational teams within repairs and maintenance will manage the day-to-day delivery of the asbestos air tests and surveys with the contractor and will be a point of liaison for resolving any complexities with jobs onsite.

A monthly meeting will take place with an operational representative, the contractor and a contract team representative to discuss overall performance and any matters arising. A quarterly meeting will also take place with higher-level management to go through contractual matters, any escalations that could not be resolved at the monthly meeting, and social value obligations.

Corporate / Non-Domestic Stock

The Council has a non-domestic stock of approximately 1000 properties, including schools. A complete review of Council assets is currently being carried out and this number is subject to change.

The need for air testing following the removal of asbestos and emergency situations is a legal requirement, as is the need for management surveys within Council owned properties in order to comply with the Duty to Manage (Regulation 4). Suitable and sufficient asbestos refurbishment / demolition surveys are also legally required ahead of all planned construction works.

The Corporate Health & Safety Asbestos Team will commission asbestos related works. A monthly meeting will take place with an operational representative, the contractor and a contract team representative to discuss overall performance and any matters arising. A quarterly meeting will also take place with higher-level management to go through contractual matters, any escalations that could not be resolved at the monthly meeting, and social value obligations.

- 4.2 Estimated Value

The combined total estimated aggregate value for Asbestos Air Testing and Surveys is £960,000 (£160,000 per annum), based on a maximum contract term of 72 months. The initial term will be 24 months, with two optional extensions of up to 24 months each.

Housing Stock

The total estimated aggregate value for Asbestos Air Testing and Surveys is £750,000 (£125,000 per annum), based on a maximum contract term of 72 months. The initial term will be 24 months, with two optional extensions of up to 24 months each. The contract value is based on historical asbestos spend and is inclusive of the return of the PFI2 properties in April 2022.

This contract will be funded using an existing budget for wider repairs contractors from the Housing Revenue Account (HRA).

Due to the specialised nature of the works required, it is difficult to deliver specific reductions in spend and spend is likely to increase with the return of the PFI2 properties. Contractors are invited to outline as part of the tender process, how they will deliver value for money during the life of the contract. However, testing and surveying services offer limited flexibility for efficiencies.

A two-stage consultation will be carried out with leaseholders (known as Section 20 consultation). Asbestos removals in communal areas do not occur frequently, however when they do leaseholders contribute to the cost of the air testing following the removal.

Corporate / Non Domestic Stock

The total estimate aggregate value for Asbestos Air Testing and Surveys is £210,000 (£35,000 per annum), based on a maximum contract of 72 months. The initial term will be 24 months, with two optional extensions of up to 24 months each. The contract value is based on historical asbestos spend.

This contract will be funded from the General Fund and come from existing budgets within Community Wealth Building and Environment Directorates, as both areas commission asbestos related works from the corporate asbestos team.

4.3 Timetable

The Council intends to carry out the first stage of the leaseholder consultation in January 2022. The mini competition will take place February 2022 and the evaluation in March 2022. The second stage of the leaseholder consultation will be held in April 2022. The contract award will be in May 2022, with the contract start being in September 2022, to coincide with the expiry of an existing contract.

4.4 Options appraisal

As part of this procurement four options were considered:

- Delivering the service in-house
- A collaboration with neighbouring boroughs
- Use of external frameworks
- A competitive procurement process solely for Islington

Insourcing was considered, however this is not deemed feasible. The delivery of asbestos air testing and surveys is a highly specialist area and carries a significant amount of health and safety risk, for not only the protection of residents', but also the protection and responsibilities of operatives and staff. To deliver this service in-house would require a specialist license for the council applied for via the Health and Safety Executive (HSE), which would require renewal every three years, subject to the HSE review. Training would be required and refresher training for the air testing and survey roles. In addition, an asbestos sampling laboratory would need to be sourced, specialist materials and equipment for the safe delivery of the air testing and surveying and intensive monitoring of staff undertaking the air tests and surveys would be required. This would not only be expensive for the council to deliver, but the sporadic demand led volumes of work would make planning for an appropriate workforce difficult and run the risk of employing staff without a guaranteed level of work to justify a direct labour force approach.

Collaborating with neighbouring boroughs has been considered but is not recommended due to the limited funding, resources and time available to instigate this approach at present. However, the council is undertaking work to look at future opportunities for collaborations with neighbouring boroughs for specific specialist services, with a view to making savings where insourcing is not a viable option.

The proposed option is to use external framework agreement via the South East Consortium (SEC), which offer a quick route to market. In order to demonstrate value for money for the council, a 'mini competition' will take place for the contract with the existing providers on the framework agreement. Using external framework agreements ensures rigorous health and safety checks have already been carried out by the central purchasing body (SEC) and savings could be realised due to the central purchasing body (South East Consortium), already having conducted many of the checks and processes to obtain competent and adequately licensed contractors.

A competitive tender process with the open market was considered, however due to the specialist nature of asbestos air testing and surveys and the health and safety implications involved, there is a more limited market of available suitably qualified and licensed contractors. The use of an external framework agreement offers potential savings through bulk volumes of buying services, than a competitive tender process as a single council.

4.5 Key Considerations

Delivering social value to Islington residents will be a contractual obligation for the successful contractor. A clear set of rigorous social value measures and targets will be included in the contract documents and social value will form an essential element of the quality evaluation. All social value proposals made within the tender submissions will form part of the final contract documentation. Performance in relation to social value will be monitored at regular contract meetings and will be a consideration in any decision to award a contract extension. Social value contributions will include apprenticeships (where applicable), work experience placements and job shadowing, however due to the health and safety aspects of the works, this would be office based or on the reinstatement works and training opportunities for residents. These will be agreed with the council's iWork team who will focus on job opportunities for local residents, especially those who are disadvantaged in the labour market.

Other social value contributions such as contractors proposing a fixed amount of hours per set value of turnover to contribute to community projects will also be considered during the

procurement process, relevant to the lower value of the contract. The contractor will also be expected to contribute to in-house repairs training programmes for residents' by delivering asbestos awareness training to consider when undertaking DIY projects within their properties.

Environmental factors such as reducing C02 emissions and air pollution within the borough will be considered during the procurement process. This includes the use of environmentally friendly vehicles and optimising journey routes and times to reduce the amount of travelling undertaken.

London Living Wage will be included as a condition of the contract. However, the current market pays above the London Living Wage for asbestos removals, operatives and asbestos surveyors. The contractor will need to ensure that the staff they employ have clear and fair terms and conditions of employment, access to trade unions and training opportunities.

Consideration will also be given to how the bidding contractors will monitor these elements throughout their supply chain that they intend to use for this contract. Employees of the contractor assigned to and carrying out asbestos works under the current contract will be subject to TUPE regulations as part of this procurement. The council has the flexibility to use a form of contract of choice, as part of the 'mini competition' process and these points will be included within the contract terms and conditions.

4.6 Evaluation

A 'mini competition' will be carried out via the South East Consortium (SEC) for the contract. This enables the council to use our own specification, cost model, and incorporate social value into the tender evaluation criteria.

A notice will be issued to SEC's existing providers on the 'Asbestos Inspections' framework agreement allowing them to express an interest in the mini competition. The tender documents will be issued via SEC on their portal to those who expressed an interest, for a minimum of three (3) weeks for the contract.

The cost criteria must be linked to the external frameworks pricing, therefore a higher proportion of the weighting will be distributed with more significance placed on the areas that the council frequently use.

The quality criteria will consist of:

- Proposed approach to Social Value and promoting opportunities for local residents, including reducing carbon footprint (20%)
- Proposed approach to customer liaison and working with third parties (20%)
- Proposed approach to Asbestos Health and Safety and managing surveys and air tests in differing environments (20%)

The contract will be awarded to the Most Economically Advantageous Tender (MEAT), the award criteria will be set at 60% quality, and 40% cost.

SEC conducted their own tender process for the suppliers on the existing framework agreement using 60% quality and 40% cost. The quality criteria they used consisted of

keeping up to date with current legislation, managing the risks of asbestos inspections, managing asset records and training management.

4.7 Business Risks

The Council is responsible for undertaking the repair, maintenance and improvement of its housing properties and installations in accordance with Part 2 of the Housing Act 1985 and section 11 of the Landlord and Tenant Act 1985. Failure to identify and air test asbestos would prevent essential repairs from going ahead and would result in the council not complying with its legal obligations. In addition, the council has a duty to manage asbestos under the Control of Asbestos Regulations 2012.

Residents are reliant on the council to ensure that their homes are kept in good working order with access to utilities and sanitation. Failure by the council to meet its obligations could adversely impact residents, particularly due to the health and safety implications of the nature of the work involved, and this carries a reputational risk for the council. Residents expect that their repairs to be carried out effectively. These risks can be mitigated by ensuring this contract is procured within the given timescale allowing asbestos to be removed so that appropriate repairs can be carried out.

There is a risk that contractors cannot meet volumes of work. This risk is managed by clear requirements set out within the specification and rigorous assessment at method statement stage within the tender.

Risk	Likelihood	Impact	Priority	Mitigation
Procurement is unsuccessful with no suitable supplier tendering or being identified	Low	High	High	Interim emergency measures will be sought and plans to re-procure put in place
The successful tenderer pulls out of the contract prior to start of the contract	Low	Medium	High	Default to the next highest scoring tenderer from the mini competition
Delays to the procurement process result in limited mobilisation time for new supplier	Medium	Medium	High	A project plan is in place and the Commissioning Officer and the Project Team need to ensure agreed key milestones are met.

- 4.8 The Employment Relations Act 1999 (Blacklist) Regulations 2010 explicitly prohibit the compilation, use, sale or supply of blacklists containing details of trade union members and their activities. Following a motion to full Council on 26 March 2013, all tenderers will be required to complete an anti-blacklisting declaration. Where an organisation is unable to declare that they have never blacklisted, they will be required to evidence that they have 'self-cleansed'. The Council will not award a contract to organisations found guilty of blacklisting unless they have demonstrated 'self-cleansing' and taken adequate measures to remedy past actions and prevent re-occurrences.
- 4.9 The following relevant information is required to be specifically approved in accordance with rule 2.8 of the Procurement Rules:

Relevant information	Information/section in report
1 Nature of the service	<p>Asbestos Air Testing and Surveys</p> <p>See paragraph 4.1</p>
2 Estimated value	<p>The combined estimated value per year is £160,000 (total aggregate value £960,000)</p> <p>The estimated Housing value per year is £125,000 (total aggregate value £750,000)</p> <p>The estimated Corporate value per year is £35,000 (total aggregate value £210,000)</p> <p>The agreement for the contract is proposed to run for a period of 24 months with two optional extensions of up to 24 months each (total term including extensions 72 months)</p> <p>See paragraph 4.2</p>
3 Timetable	<p>Section 20 first stage – January 2022</p> <p>Expression of interest – February 2022</p> <p>Evaluation – March 2022</p> <p>Section 20 second stage – April 2022</p> <p>Award – May 2022</p> <p>Contract Start – September 2022</p> <p>See paragraph 4.3</p>
4 Options appraisal for tender procedure including consideration of collaboration opportunities	<p>Preferred option is a 'mini competition' using an external framework agreement</p> <p>See paragraph 4.4</p>
5 Consideration of: Social benefit clauses; London Living Wage; Best value; TUPE, pensions and other staffing implications	<p>London Living Wage and social value will be included as part of the contract terms. Best value is considered as part of the specification, award criteria and delivery of the service. There may be TUPE implications.</p> <p>See paragraph 4.5</p>
6 Award criteria	<p>Quality 60% and cost 40%. The award criteria cost/quality breakdown is more particularly described within the report.</p> <p>See paragraph 4.6</p>

7 Any business risks associated with entering the contract	See paragraph 4.7
8 Any other relevant financial, legal or other considerations.	See paragraph 5.1 – 5.4

5. Implications

5.1 Financial implications:

Housing

This report is seeking to procure a contractor to carry out Asbestos Air Testing and Surveys. This contract is estimated to cost £125k per year for Housing, which is broken down to £100k for existing stock and £25k for the return of PFI2 properties in April 2022.

Currently, there is no budget allocation for PFI2, but provision to fund for these properties has been made in the latest 30-year HRA business plan (updated Sep 2020). PFI2 properties are still new within Repairs, so finance will monitor these closely to understand the true impact it will have to the budget.

The cost of providing this service for existing stock (£100k) will be funded through the Council's HRA Repairs and Maintenance budget (£35.2m in 2021-22), of which, £138k has been allocated to carry out Asbestos air testing and surveys for 2021-22.

In the past, these works were carried out by Corporate Health & Safety then recharged back to the Housing Revenue Account (HRA). This procurement will replace the service provided by Corporate H&S.

Corporate / Non Domestic Stock

Corporate Landlord division has sufficient existing budget to cover the annual contract value of £35,000.

5.2 Legal Implications:

The Council is responsible for undertaking the repair, maintenance and improvement of its housing properties and installations in accordance with Part 2 of the Housing Act 1985 and section 11 of the Landlord and Tenant Act 1985. Failure to identify and air test asbestos would prevent essential repairs from going ahead and would result in the council not complying with its legal obligations. In addition, the council has a duty to manage asbestos under the Control of Asbestos Regulations 2012. The council has the power to procure and enter into such contracts under section 1 of the Local Government (Contracts) Act 1997 and s111 of the Local Government Act 1972.

The proposed contract is a works contract. The threshold for application of the Public Contracts Regulations 2015 (the Regulations) is currently £4,733,252.00 for works contracts. Contracts below this value do not need to be advertised in Find a Tender service (FTS) or Contracts Finder. However such contracts need to be procured with due regard to the principles of equal treatment, non-discrimination and transparency that underpin the Regulations. The council's Procurement Rules also require contracts over the value of £189,330.00 to be subject to competitive tender.

The proposed procurement strategy, to conduct a mini-competition via the South East Consortium (SEC) Framework Agreement, complies with the principles underpinning the Regulations and the council's Procurement Rules.

On completion of the procurement process, the contract may be awarded to the highest scoring tenderer subject to the tender providing value for money for the council.

The contract is for a period in excess of 12 months and therefore will be a qualifying long-term agreement under section 20 of the Landlord and Tenant Act 1985. Accordingly, the Council will need to comply with the leaseholder consultation requirements applicable to long term qualifying agreements set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (as amended).

5.3 Environmental Implications and contribution to achieving a net zero carbon Islington by 2030:

Environmental impacts identified for this contract when dealing with asbestos are exposure to asbestos containing fibres and disposal of fibres for intrusive surveys. Works will be carried out in alignment with the appropriate legislation to ensure that the risk to health of both contractors and residents/occupants is minimised. Any asbestos waste generated will be hazardous and should be disposed of as such legally and in alignment with the waste hierarchy.

The contractor will be using vehicles to arrive at and undertake air tests and surveys to sites, which will contribute to air pollution and congestion. The contractor will be assessed on the commitment to use electric, low or zero emission and EURO6 compliant vehicles.

5.4 Resident Impact Assessment:

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

A Resident Impact Assessment was completed on 15 July 2021 and the summary is included below. The complete Resident Impact Assessment is appended.

It is anticipated that the delivery of this service will not have any negative impact on any persons within the protected characteristics groups. The delivery of the contract will have a positive impact on all residents including those with protected characteristics as it is designed to enable repairs to be carried out within tenants' properties upon the safe air testing following asbestos removals and surveys to identify asbestos containing materials.

6. Reasons for the decision:

- 6.1 Islington Council has a duty to carry out repairs for tenants' and keep homes in good working order. Asbestos Air Testing and Surveys are required to enable asbestos removals and repairs to be carried out and manage the health and safety of residents' within council owned properties, or staff in corporate buildings. The procurement of one contractor is required to allow the continuity of service for the delivery of asbestos air testing and surveys for both housing repairs and maintenance, and the corporate asbestos team.

7. Record of the decision:

- 7.1 I have today decided to take the decision set out in section 2 of this report for the reasons set out above.

Signed by:

Corporate Director of Homes and
Neighbourhoods

Date

Appendices

Appendix 1 – Resident Impact Assessment

Background papers:

None

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