

Homes and Neighbourhoods 222 Upper Street, N1 1XR

#### **Report of: Executive Member for Housing & Development**

Meeting of:	Date:	Ward(s):	
Executive	10 February 2022	All	
Delete as appropriate	Exempt	Non-exempt	

# SUBJECT: Procurement Strategy for Water Systems (Legionella Control) Monitoring, Testing, Servicing and Associated Remedial Works

#### 1. Synopsis

- 1.1 This report seeks pre-tender approval for the procurement strategy regarding Water Systems (Legionella control) monitoring, testing, servicing and associated remedial works in accordance with Rule 2.7 of the Council's Procurement Rules.
- 1.2 This strategy is to deliver a planned testing and servicing of mechanical and engineering installations comprising of water systems for the control and prevention of legionella. The service will include planned sampling and testing, cleaning and disinfecting of water tanks and preventative and remedial maintenance works. The remedial works may also include tank replacements, conversions to mains water systems and alterations to existing pipework. The resulting contract will be made available to other council departments who will be able to access the services from it.

#### 2. Recommendations

2.1 To approve the procurement strategy as outlined in this report.

2.2 To delegate authority to award the contract to the Corporate Director of Homes & Neighbourhoods following consultation with the Executive Member for Housing and Development.

# 3. Background

#### 3.1 Nature of the service

Legionella is a naturally occurring bacteria and is present in all water sources. All man-made hot and cold water systems have the potential to provide an environment where legionella can grow. Where conditions are favourable, for example in water within a temperature which enables the bacteria to live and multiply over a period of time there is an increasing risk of exposure by users of the affected water. If legionella is allowed to multiply to dangerous levels it has the potential to cause Legionnaire's disease which could lead to serious respiratory problems. We therefore need this this service to ensure that adequate control measures are in place to minimise the risk of Legionnaires disease by ensuring checks and actions are taken to keep levels of Legionella bacteria within safe limits. This is to ensure the health and safety of residents and visitors to council homes.

Islington Council is required to meet its regulatory requirements: ACOP L8, 'The Control of Legionella Bacteria in Water Systems, HSG274 part2, 'The Control of Legionella Bacteria in Hot and Cold Water Systems and HSG274 Part 3 'The control of Legionella in other Risk Systems.

Housing Property Services has a directly employed in-house Cyclical Testing team responsible for ensuring the council meets its regulatory obligations with regards to water management and the control of legionella. The in-house Cyclical Testing team require additional support from an external contractor to undertake the specialist testing service, monitoring and remedial works which we cannot do in-house as this is a specialised area requiring specialist services and equipment such as the services of a water testing centre and testing equipment.

We have an existing contract in place with a specialist supplier undertaking these safety checks which is due to end April 2022. We have arranged for a separate 12 month interim arrangement to cover the service until this new longer term contract commences.

The council provides water sampling, testing, monitoring and servicing to approximate 1142 communal tanks located in 415 residential sites, 47 community centres, 7 Tenant and Resident Association offices, 6 concierge offices, 10 Boiler rooms, 3 reception centres and 113 caretaker's lodges. The existing housing stock comprises of approximately 20,900 rented and 8,046 leaseholder units. This number will increase by approximately 4000 when PFI 2 properties are returned back in-house in April 2022. We understand from Partners for Improvement in Islington there are only a very small number of communal water tanks in properties currently managed by the PFI 2 contract. New build projects will be added to the programme throughout the contract therefore the workload will likely increase.

The testing and servicing includes risk assessment and water temperature testing which is part of a planned programme carried out monthly, six monthly and annually. Maintenance and preventative works includes cleaning and disinfecting, replacing tank lids, alterations to pipe work and from time to time converting of tank systems to mains water system and the removal of excess/obsolete tanks.

# 3.2 Estimated Value

The estimated aggregate value of this contract is  $\pounds4,550,000$  ( $\pounds455,000$  per annum) based on a maximum contract term of 120 months. The estimated annual spend is broken down to  $\pounds223,000$  for testing and Risk Assessments and  $\pounds232,000$  for remedial works. Any extensions will be subject to satisfactory performance. These figures are based on historical spend on the existing contract. Due to the nature of the contract some of the annual costs will incurred for infrastructure replacement work which can then be capitalised. Therefore the actual revenue spend is likely to be closer to the budget allocated.

This contract will be funded from an existing budget for Water Management from the Housing Revenue Account (HRA). There is not likely to be any financial savings that can be made within this contract as the market is not very competitive and the number of companies providing this specialist service and equipment such a water testing centre and testing equipment and is limited.

There is a mandatory and statutory requirement to provide these services. The council must implement effective control measures to prevent legionella developing and ensure the water systems are safe to use. A budget reduction during the contract term would impact on residents having their water supply safe and free from dangerous contagions and contamination. Failure by the council to discharge its responsibility could result adversely on residents resulting in serious health and safety implications and reputational risk to the council.

The initial term will be 48 months, with the option to extend for a further two periods of up to 36 months each. This term will allow for integration opportunities to be explored and the planned return of PFI2 properties to the council in 2022. Currently it has been confirmed there are only a small number of communal tanks identified within the PFI 2 stock and have been factored into future spend.

The value is estimated based on historical spend and there are no guaranteed volumes of work as the amount of work required will depend on future demand.

## 3.3 Timetable

The timetable for this procurement is:

Approval of Procurement Strategy: February 2022 Open tender published: June 2022 Evaluation: July 2022 Contract start: February 2023

#### 3.4 **Options appraisal**

As part of this procurement strategy five options were considered:

- Insourcing
- A collaborative procurement process with neighbouring boroughs
- Use an existing repairs contractor
- Using an external procurement framework
- Procurement through a tender exercise

1. Deliver the service in-house - In-sourcing allows Islington Council to have full control over the services delivered. The Cyclical Testing team have already recruited an additional position (from within existing budgets) and are now undertaking the water monitoring of the facilities at caretaker lodges. However, the specialist nature of this service will mean to undertake all the required testing and monitoring in-house and requires extensive recruiting of new skilled staff and upskilling of existing staff into an extensive training programme in order to meet the required standards. This is a specialised area requiring specialist services and equipment such as the services of a water testing centre and testing equipment. In addition the council would have to procure the services of a specialist supplier for the fabrication, removal and installation of tank lids and tanks.

Using the current contractors staffing structure as a benchmark, they have nine members of staff depending on the workload to deliver this service. We have two members of staff in house and would have to increase our workforce significantly. The remedial works are characterised by periods of peaks and troughs. It's not recommended to bring the service inhouse because of the additional costs associated with water testing centre, specialist training and equipment and risks of inefficiency links to peaks and troughs to service delivery.

2. Collaboration with neighbouring authorities is not an option at present, as neighbouring local authorities' services will have to be aligned with the Islington's service needs and requirements. This method will require corporate agreement from all parties and considerable lead in time to allow for the differences in service delivery including timescales for delivering cyclical programmes of works, the management of repairs, and for IT systems to be brought into line. This would be an extensive project to undertake and require significant resourcing and lead in time and therefore is not considered a viable option.

3. Use an existing repairs contractor. This would be the quickest way to get the repairs carried out. Many repairs contractors would sub-contract this type of work to a specialist, if they have a provider to engage. The price would be limited to that of the specific contractor and likely to incur additional charges for engaging a specialist.

4. An external procurement framework. The current contract was procured through a direct call-off via an external framework agreement (Fusion 21). The pricing framework does not suit our future requirements. The Fusion 21 Framework pricing module has limited room for flexibility and each component is priced individually. As we are currently tied into their pricing module any adjustments or works needed to be carried out we will need to adjust our costs as and when to reflect the repairs which adversely will have an impact on IT and administration performance/productivity.

We have created a pricing module which includes our own bespoke schedule of rates codes for standard water management activities. This can be managed through our existing IT programmes and standard payment process. Previous experience of using the procurement framework has meant we have not been able to use these schedule of rates and process payments through our IT systems and being able to use these developments is a more efficient and automated process.

Therefore, a number of frameworks relating to constructions were investigated, but none offered the required services. The procurement frameworks provides terms shorter than required which will limit the length of the contract we need.

5. A competitive Open Tender process. This is the preferred procurement route. A competitive Open Tender is effective, specific terms and conditions can be applied and allows for the assessment cost, quality and conditions to be specifically tailored to meet Islington's current and evolving needs. Volumes of work will not be guaranteed and the contract term extensions has been designed to allow for further exploration for collaboration opportunities to align Public Buildings and Schools that uses a similar service. We are proposing a contract length of ten years as we will need to build a long term working relationship with a good and reliable supplier. There is a small market of suppliers that can deliver this specialist service. This preferred route will provide the council opportunity to evaluate and deliver the best value overall whilst meeting service needs. This contract seeks to appoint a single contractor to carry out the work.

## 3.5 Key considerations

As the work procured under this contract will be carried out in communal areas of residential blocks and estates council leaseholders will be liable to be recharged for their proportion of the costs of any work. In compliance with legal requirements therefore a two stage section 20 consultation exercise will be undertaken with council leaseholders in relation to this procurement.

The social value offers of contractors will form a significant proportion of the tender evaluation. This offer will be a contractual obligation for the successful provider. Their performance will be monitored at regular contract meetings and will be a consideration in any decision on contract extension. Expectations will include to take on one apprentice water process operative giving them training specifically in the water waste management sector and a total of three apprentices over the full period of the contract.

Contractors will advertise any other general employment opportunities on the LBI portal giving Islington residents early opportunity to apply. Offer work experience where feasible and to support co-design of that experience to ensure it is meaningful and directly related to the sector. Work with our 100 hours of the world of work, schools and careers services to inform and inspire the next generation of operatives within their sector and encourage then to work to achieve the requisite Maths and English GCSE subjects needed to enter the sector. Work in partnership with our supply-chain officers to identify and procure goods and services from the list of suppliers contained within our Local directory of Suppliers for Islington (Launching March 2022) to a target of 10% of that procurement value.

London Living Wage will be included as a condition of this contract. The contract notice (advertisement) will be published on the London Tenders Portal (the Council's e-procurement portal), Contracts Finder, and Find a Tender. Relevant impact assessments have been completed as part of this procurement including a equalities impact assessment, environmental impact assessment and health and safety impact assessment.

Staff from the existing contractors delivering this contract may be subject to TUPE regulations as part of this procurement.

## 3.6 Evaluation

The tender will be conducted in one stage, known as the Open Procedure, as the tender is 'open' to all organisations who express an interest. The Open Procedure includes minimum requirements which organisations must meet before the rest of their tender is evaluated. The contract will be awarded to the Most Economically Advantageous Tender (MEAT) and the award criteria will be set at 60% quality and 40% cost. This will enable Islington to require contractors that deliver the best value overall.

The quality criteria will consist of:

- Proposed approach to managing the delivery of services according to contractual priorities with appropriate resourcing 10%
- Proposed approach to ensuring value for money, with consideration to both cost and quality of work delivered 10%
- Proposed approach to health and safety in the work environment including compliance with current legislation 10%
- Proposed approach to customer service (including managing customer expectations) and equality 10%
- Proposed approach to social value including promoting opportunities for Islington residents, and reducing carbon footprint 20%

# 3.7 Business Risks

Islington Council is required to undertake water testing under ACOP L8, 'The Control of Legionella Bacteria in Water Systems, HSG274 part2, 'The Control of Legionella Bacteria in Hot and Cold Water Systems and HSG274 Part 3 'The control of Legionella in other Risk Systems. This includes the monitoring and testing of residential locations, community centres and reception centres.

Residents are reliant on the council in ensuring that their water supply is safe and free from dangerous contagions and contamination. Failure by the council to discharge its responsibility could result adversely on residents resulting in serious health and safety implications and reputational risk to the council.

Leaseholders pay service charges for relevant monitoring, testing and servicing and expect that works will be carried out effectively and efficiently.

There is a risk the contractor cannot meet the volume work. This risk will be managed by clearly detailing within the specification all requirements and ensuring the contractor is able to complete works to time lines and agreed costs. The contract will be monitored on a monthly, six monthly and annual basis by the contracts team.

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	High	High	Interim emergency measures will be sought and plans to re- procure put in place
Delays to the procurement process result in limited mobilisation time for new supplier	Low	Medium	High	A project plan is in place and the project team are to ensure agreed key milestones are met. We will instruct the existing contractor in place to

The risk associated with this procurement are:

	continue with the service until the new contractor is fully mobilised. There will be no gap to the service.
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There will be opportunities in the future for other areas to use these services within this corporate contract as it is not departmental specific. Collaboration opportunities for building maintenance contracts will be explored between various departments across the council.

- 3.8 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.
- 3.9 The following relevant information is required to be specifically approved by the Executive in accordance with rule 2.8 of the Procurement Rules:

<b>Relevant information</b>	Information/section in report
1 Nature of the service	The Council in intending to deliver a planned testing and servicing of mechanical and engineering installations comprising of Water Systems for the control and prevention of legionella. See paragraph 1.2
2 Estimated value	The estimated value year is £455,000.
	The agreement is proposed to run for a period of 120 months with the initial term of 48 months, with the option to extend for a further two extensions of thirty six months each.
	See paragraph 3.2
3 Timetable	The details are set out in paragraph 3.3
4 Options appraisal for tender procedure including consideration of	A competitive open tender.
collaboration opportunities	See paragraph 3.4
5 Consideration of: Social benefit clauses; London Living Wage; Best value;	London Living Wage and Social Value clauses will be included as part of the contract terms. There may be TUPE implications

TUPE, pensions and other staffing implications	See paragraph 3.5
6 Award criteria	Award criteria quality 60% and 40% cost. The award criteria price/quality breakdown is more particularly described within the report. See paragraph 3.6
7 Any business risks associated with entering the contract	See paragraph 3.7
8 Any other relevant financial, legal or other considerations.	See implications section 4

## 4. Implications

#### 4.1 Financial implications:

The report is seeking to procure a contractor to carry out Water Systems monitoring, testing, servicing and associated remedial works.

The contract is estimated to cost £455,000 per year (£223,000 for water testing and servicing and £232,000 for water remedial works), with a potential contract length of up to 120 months (10 years). The estimated contract value is based on prior years' spend and it is not expected to increase significantly for PFI2.

Housing Water Systems monitoring, testing, servicing and associated remedial works is funded from the Council's Housing Revenue Account (HRA) Repairs and Maintenance budget which equates to £35.2m for 2021-22.

The current Repairs and Maintenance budget allows for water testing and servicing at £298,200 per year.

As such, the total estimated costs for water testing, servicing and remedial costs will be funded from the Repairs and Maintenance budget in part from the existing budget allocation for water strategy of £298,200 with any costs exceeding the current allocation being contained by other budgets within the Repairs and Maintenance budget envelope (estimated to be £156,800) thus not creating any additional pressure to the Council's HRA financial position.

In line with the return of PFI2 properties in 2022, Finance will review Repairs and Maintenance budgets with the view of realigning them.

## 4.2 Legal Implications:

This report is seeking approval of a procurement strategy for water systems works. The Council has regulatory obligations regarding water management and the control of legionella.

The council has power to carry out this work under section 111 of the Local Government Act 1972 which enables the council to carry out any activity that is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. The Council has power to enter into such contracts under section 1 of the Local Government (Contracts) Act 1997.

The Corporate Director of Homes & Neighbourhoods has authority to approve procurement strategies in relation to contracts for using revenue money over £2,000,000 of Islington Council spend where authorised to do so under the constitution or by a specific Executive decision (Procurement Rule 18.1.3).

The value of the proposed procurement is £4,550,000 over 10 years, comprising an initial term of four years with the option to extend for a further two periods of up to three years each. The threshold for application of the Public Contracts Regulations 2015 (the Regulations) is currently £4,733,252 for works contracts. Contracts below this value do not need to be advertised in Find A Tender. 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 £181,302 to be subject to a formal competitive tender process.

The proposed procurement strategy, to procure the service using a competitive open tender process, is in compliance 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 proposed procurement 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).

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

This contract will have several environmental impacts. These include journeys made by the contractor, the use of energy, water and materials, the generation of waste, the use of chemicals during the testing process, and the potential for disturbance of biodiversity such as roosting bats during works in roof spaces.

There are several ways in which these impacts will be mitigated. The tender scoring will include 10% for reducing the carbon footprint of the service, including reducing electricity use. The brief for the service will set out expectations regarding waste, vehicle and plant use. Contractors will be asked to source goods from sustainable sources and with recyclable packaging, and ensure materials/equipment used is recyclable and repairable (including returning waste parts to suppliers). They are also expected to ensure that water loss is kept to a minimum and that any electrical equipment replaced is more energy efficient where possible. The contractor is also legally required to protect any roosting bats and nesting birds they encounter.

# 4.4 Equalities 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.

An EPIA screening toolkit was completed on 9 December 2021 which is a live document that can be updated as the work progresses.

The nature of this contract is to ensure adequate control measures are in place in minimise the risk of legionella. It is anticipated that the delivery of this service will have a neutral impact on any persons with the protected characteristics group and will benefit everyone.

#### 5. Reason for recommendations:

5.1 Islington Council is required to ensure that adequate control measures, thorough identification and assessment of all potential sources of legionella are in place to minimise the risk of legionella and to ensure the safety of our residents and visitors as part of the regulatory requirements of ACOP L8.

The procurement of one contractor is required to ensure the delivery of planned testing and servicing of the mechanical and engineering installations comprising of water systems for the control and prevention of legionella are provided.

## Appendices

• Equality Impact Assessment.

Background papers:

None.

Final report clearance:

Signed by:

NZ Holdent)

Corporate Director of Homes & Neighbourhoods

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