

Housing Property Services
33-37 Brewery Road, London, N7 9QH

Report of: Corporate Director of Homes and Neighbourhoods

Date: 18th December 2023

Ward(s): All

Subject: Procurement Strategy for Legal Disrepair Works

1. Synopsis

- 1.1. This report seeks pre-tender approval for the procurement strategy in respect of provision of a borough-wide responsive repairs and maintenance service to deal with cases of disrepair that are subject to a legal claim by the tenant.
- 1.2. The procurement of this new contract will be completed in accordance with the approved strategy as required by the Council's Procurement Rules.

2. Recommendations

- 2.1. To approve the Procurement Strategy for Legal Disrepair Works.

3. Date the decision is to be taken

- 3.1. 18th December 2023

4. Background

Nature of the service

- 4.1. The Council is a landlord to around 35,000 Council tenants and leaseholders living in homes located across the borough. As a landlord the Council is responsible for ensuring that repairs needed to its residents' homes are carried out in a timely fashion. The works

needing to be done under the Legal Disrepair contract will be general building related repairs but will be undertaken in instances where the Council has received an Early Notification Letter for disrepair, and where the Council's team have engaged with the affected resident's legal representatives.

- 4.2. The main difference between legal disrepair works and general repairs and maintenance is legal disrepair work orders are received by the court who at times, guide the Housing service's specification of works. With legal disrepair cases, the service is required to record all communication and evidence. Failure to meet these requirements can result in legal action, penalties, and fines.
- 4.3. The current Legal Disrepair contract expires on the 6 February 2024. Legal disrepair works are allocated, and delivery is overseen by the Council's in-house Legal Disrepair Team.
- 4.4. The existing contract only has one contractor. It has been identified the contractor has experienced difficulties delivering a service to the entire Borough. It is therefore recommended that the new contract requires two contractors to better manage the quantity of work needed. Each contractor will be given work on a rotation basis throughout the Borough on a case-by-case basis to ensure a fair split of works between the two contractors. This will be monitored closely by the Legal Disrepair manager who will use the IT systems in place to ensure this split is fair. Under the existing arrangements, there is an increased likelihood of subcontracting, which has a potential to impact quality and continuity of the service. It is hoped having increased capacity with two contractors will mean fewer jobs need to be sub-contracted.
- 4.5. The service requires the Legal disrepair contract to be separate from general build works due to the specialist nature of the works. Legal disrepair cases often involve complex legal and regulatory requirements. Having a dedicated and specialist contractor ensures they understand the nuances of these works and can navigate through them effectively.

5. Estimated value

- 5.1. This service will be funded through existing Housing Revenue Account repairs and maintenance budgets for works carried out linked to Council housing stock. Any works raised against non-HRA public buildings will be funded from existing General Fund repairs and maintenance budgets.
- 5.2. The total estimated value for this procurement is £1,400,000 (£350,000 per annum), based on a maximum contract term of forty-eight (48) months. The estimated contract value is based on budget allocation.

5.3. Historical spend over the past two years is outlined in the table below:

| Year | Legal Disrepair Works |
|--------------|------------------------------|
| 2022 | 385,766.24 |
| 2023 | 438,396.42 |
| Total | 824,162.66 |

- 5.4. The service notes that the new Homes (Fitness for Human Habitation) Act 2018 that came into force in 2019/20 and clarified landlord duties, and a recent increase in legal firms commencing claims proactively chasing updates on cases has had an impact on the volume of legal disrepair works.
- 5.5. The service also recognises that increased focus on damp and mould related work have caused an increase on the spend that was not previously budgeted for these disrepair works. In-line with the increased damp and mould works included within legal claims there has been a 40% increase of work orders over the service.
- 5.6. More stringent measures have been introduced to reduce renewals of certain works across the service to be more repairs focussed where possible in line with the Repairs policy. The number of non-procured contractors the service has had to introduce has made it difficult to control spend, as increased rates have been agreed. However, the capital programme is now delivering more planned work to our Housing stock that will also reduce the number of repairs being subject to legal challenge moving forward. In addition, the service is working with our Health and Safety team to review working at height access options to potentially reduce the use of scaffolding.
- 5.7. All estimated contract values shown above are based on budget allocation data on the types of work that will be covered by the new contracts. These estimates are predicted to be considerably lower than our actual historic spend due to under investment in capital works programmes following delays such as COVID19. The service notes that the under investment in capital works during COVID19 resulted in wear and tear on assets falling under disrepair and increased the number of repairs. This programme is now back on track which means part of our stock will need less upkeep.
- 5.8. Section 20 leaseholder consultation does not apply to this contract as these works will only be carried out within council tenants' homes.

6. Timetable

- 6.1. To ensure a new contract that meets the service's specific needs is in place as quickly as possible, the indicative timetable for the procurement of the new contract is:
- Approval of Procurement Strategy – 7 November 2023
 - Publication of tender pack – November 2023
 - Approval of contract award – February 2024
 - Start of new contract – April 2024
- 6.2. In preparation of the procurement strategy the service has consulted with the Health and Safety, Finance, Legal and Strategic Procurement Teams.

7. Options appraisal

- 7.1. The following procurement routes have been considered as part of the planning for this procurement exercise:
- Do nothing
 - Merge this separate contract into the general arrangements for housing repair
 - Deliver the service in-house
 - A competitive procurement process solely for Islington
 - Use of an external framework agreement or dynamic purchasing system (DPS)
 - A collaborative approach with other boroughs
- 7.2. In view of the nature of the service, doing nothing is not an option. The Council has a statutory obligation to deliver the service in question. To allow the existing contract to expire without renewing means the Council leaves itself open to significant reputational damage, legal challenge and financial risk due to increased compensation payments as a result of losing legal claims.
- 7.3. The reason for not merging this separate contract into the Council's general arrangements for housing repairs is set out in paragraphs 4.2 and 4.5 above.
- 7.4. The primary benefit of the insourcing option for the Council is that it would achieve a greater level of control over the delivery of the service and the team that carries out the work. Unfortunately, the Council does not have the in-house resource to be able to complete the works and recruiting teams would take considerable time. The Council does not have the operational specialism in this area which can involve complex repair works and the challenging dissatisfied customers which a specialist external contractor

can bring. There may also be strategic benefits to legal disrepair works being carried out by an independent specialist third party that has not been involved in the repair works prior to the case becoming a legal case.

- 7.5. A competitive procurement process solely for Islington would enable a higher degree of control over the process. However, this option is not the fastest route to market. The use of an external framework agreement offers potentially better prices given the increased combined buying power of the framework agreement due to the higher volumes of potential work that contractors on the framework can access as opposed to a competitive tender process being run as a single council.
- 7.6. The benefits of using an existing framework agreement or dynamic purchasing system (DPS) are that contractors on the framework agreement have already completed a pre-selection process to join either option. This means the contractors on the agreement have already been assessed for suitability and capability for Disrepair contracts, as well as against technical criteria. This enables the Council to complete the procurement exercise more quickly than other options. The main drawback of this option is that the Council will have slightly less control as it needs to work within the existing rules of the agreement.
- 7.7. Several existing external framework agreements and a DPS were considered as part of the options appraisal. The recommended option is to use the Fusion 21 Procurement Framework, Reactive Repairs & Empty Building Lot 4 – Disrepair Works, which offers access to a selection of contractors that are suitably qualified and experienced in this field and having demonstrated general technical ability, as well as a quick route to market. A ‘mini competition’ will take place amongst the contractors on the framework for the contract which will provide value for money for the Council.
- 7.8. Collaborating with neighbouring boroughs has been considered but is not recommended due to the limited funding, resources, and time available to instigate this approach. 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.

8. Key Considerations

- 8.1. Delivering social value to Islington residents will be a contractual obligation for the successful contractors. A clear set of rigorous social value measures and targets will be included in the contract specification and social value proposals made within the tender submission will form an important element of the quality evaluation, which will be a minimum of 20% within the quality element of the tender process.

- 8.2. The chosen contractors will be required to jointly contribute to an employment opportunity paid at LLW to enable an Islington resident, recruited, and nominated by the council's construction service, to gain hands on experience of working and/or to finish a particular unit of an NVQ while progressing upon their career path.
- 8.3. Contractors will advertise any other general employment opportunities on the LBI portal giving Islington residents early opportunity to apply. They will also offer work experience where feasible and to support co-design of that experience to ensure it is meaningful and directly related to the sector, and 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 them to work to achieve the requisite Maths and English GCSE subjects needed to enter the sector.
- 8.4. The suppliers will be required to support the council's 'Making Every Contact Count' (MECC) initiative to ensure its workforce use interactions with residents as an opportunity to provide them with signposting to targeted support and guidance from council or other services. Contractors will also be required to support the council's safeguarding policies and approach to tackling domestic abuse through training of their operatives to spot issues and appropriately report concerns when working with residents.
- 8.5. In addition, tenderers will need to demonstrate their commitment and support to Council priorities related to net-zero carbon and environmental protection. These measures will reduce the carbon footprint of the delivery of this service, for example, by using electric vehicles to undertake works and using sustainably sourced materials whenever possible. Contractors will also be required to consider and take reasonable steps to protect wildlife when undertaking works to the outside of buildings, for example nesting birds or roosting bats.
- 8.6. London Living Wage will be included as a condition of the contract. The successful contractor will need to ensure that their staff have clear and fair Terms and Conditions of employment, access to Trade Unions and training opportunities. The contract's specification will ensure recruiting any operational or administrative staff on a zero-hour contract is prohibited.

- 8.7. There may be TUPE implications resulting from this contract. This is being checked with the current contractor and the results will be made available as part of the tender process.

9. Evaluation

- 9.1. A 'mini competition' will be carried out to secure a call off contract pursuant of the Fusion 21 Framework called Reactive Repairs & Empty Building Lots 4 – Disrepair Works. This enables the council to use our own specification, cost model, and incorporate social value into the mini competition evaluation criteria.
- 9.2. Expressions of interest will be sought from existing contractors on the Framework allowing them to express an interest in the mini competition. The mini-competition documents will be issued via Fusion 21 on their portal to those who expressed an interest, for a minimum of three (3) weeks for the return of tenders.
- 9.3. The contract will be awarded to the Most Economically Advantageous Tender (MEAT), the award criteria will be set at 60% quality and 40% cost.
- 9.4. The quality criteria will be weighted as:
- Proposed approach to Social Value (20%)
 - Proposed approach to maintaining documentation and managing remedial works required (10%)
 - Proposed approach to health and safety (10%)
 - Proposed approach to quality management and managing and prioritising workloads (10%)
 - Proposed approach to mobilisation, resourcing and service delivery (10%)

10. Business risks

- 10.1. The Council is responsible for undertaking the repair, maintenance and improvement of its housing properties and installations therein (Part 2 of the Housing Act 1985 and sections 9A and 11 of the Landlord and Tenant Act 1985). The Council has power to enter such contracts under section 1 of the Local Government (Contracts) Act 1997 on the basis that such services are properly required for the discharge of the Council's functions.
- 10.2. There is a risk that any delays to the procurement exercise will result in the new contract not being live prior to the current contract ending. This is being mitigated by the project

team closely monitoring the milestones for the completion of the procurement. Support from Fusion 21 will assist with the procurement.

- 10.3. There is a risk contractors cannot meet volumes of work. This risk is managed by clear requirements set out within the specification and rigorous assessment during the mini competition. The appointment of two contractors to deliver this contract means they can act as a back up to each other, spreading the risk of problems with capacity.
- 10.4. Failure to comply with the Pre Action-Protocol for Housing Disrepair or court orders exposes the Council to substantial claims for legal costs and compensation and significant reputational risk. This can be mitigated by the appointment of two contractors able to provide separate specialist teams working only on legal repair works, focused on operational case and contract management.
- 10.5. While there is interest from the incumbent contractor and market engagement suggests there will be interest from others, growing economic uncertainty and the impact of inflation presents a risk that no suitable contractor will be identified following the mini competition. Should this happen alternative procurement routes will be considered to secure a suitable contractor.
- 10.6. There is also a risk that owing to economic uncertainty and increases in the cost of delivering the service during the life of the contract, that the successful tenderer will pull out of the contract after it has been mobilised. This can be mitigated by use of appropriate indexation measures, not necessarily CPI but potentially increase in construction material indices. This will also be mitigated through robust contract management, ensuring that the suppliers have the opportunity to identify their risks and discuss these with the council in the monthly operational meetings.
- 10.7. In each case, officers will consider emergency interim measures and seek to re-procure the contract.
- 10.8. 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.

10.9. 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>General building related repairs but will be undertaken in instances where the Council has received an Early Notification Letter for disrepair, and where the Council's team have engaged with the resident's legal representatives.</p> <p>See section 4</p> |
| 2. Estimated value | <p>The estimated value per year is £350,000.</p> <p>The agreement is proposed to run for a period of four (4) years.</p> <p>See section 5</p> |
| 3. Timetable | See section 6 |
| 4. Options appraisal for tender procedure including consideration of collaboration opportunities | <p>A framework has been selected to appoint two (2) contractors</p> <p>See section 7</p> |
| <p>5. Consideration of:</p> <ul style="list-style-type: none"> • Social benefit clauses; • London Living Wage; • Best value; • TUPE, pensions and other staffing implications | <p>The service has clear impacts on social value and these will be embedded in the quality element of the tender process, which will form 20% of the overall quality component. LLW will be a requirement of the successful service provider. Best value will be achieved via regular contract review meetings.</p> <p>See section 8</p> |

| | |
|---|---|
| 6. Award criteria | <p>The contract will be awarded to the tenderers submitting the Most Economically Advantageous Tender (MEAT) and the second-placed such tenderer and the award criteria will be set at 60% quality and 40% cost.</p> <p>See section 9</p> |
| 7. Any business risks associated with entering the contract | See section 10 |
| 8. Any other relevant financial, legal or other considerations. | See section 11 |

11. Implications

11.1. Financial Implications

- 11.1.1. Legal disrepair works are financed through the Housing Revenue Account (HRA) Repairs and Maintenance budget of the Council. For the financial year 2023-24, this budget totals £45.211m. Out of this allocation, an aggregated budget of £6.655m has been designated to cover all expenditure related to subcontractor works and services, encompassing general repairs, electrical repairs, roofing repairs, scaffolding, brickwork repairs, drainage works, and legal disrepair works among others.
- 11.1.2. Legal disrepair works are anticipated to fall under revenue expenditure. However, there is a possibility that certain works may be classified as capital expenditure. In such cases, the funding for these projects will be drawn from the HRA's Major Works high value repairs capital budget, which for 2023-24 amounts to £0.800m.
- 11.1.3. It is expected that on each contract anniversary, an annual adjustment to the contract values will be implemented. The choice of indices to be used, which may encompass options such as the Retail Price Index (RPI), Consumer Price Index (CPI), or Building Cost Information Service (BCIS) Maintenance Cost Indices will need to be carefully evaluated and selected as the financial effects of each will vary.

- 11.1.4. Legal disrepair works are contingent on demand, making it challenging to pinpoint precise annual contract values. The estimated annual value for legal disrepair works stands at £0.350m or £1.400m over the maximum 4-year contract duration. Despite having spent more than the estimated annual amount on legal disrepair works in the past, it is expected that the capital investment in our stock through the major works programme will prevent our assets from falling into disrepair, thus reducing the need for legal disrepair works going forward.
- 11.1.5. If the expected reduction in demand doesn't occur, there might be consequences for the budget designated for other works and services funded via the subcontractor budget allocation. This situation could result in reduced funding for these activities or create a cost pressure on the existing budget, resulting in growth to the HRA which would need to be met from HRA general reserves.
- 11.1.6. In recent years, spending on the repairs and maintenance service has shown a consistent upward trend. Notably, the expenditure on subcontractors has consistently exceeded its allocated budget on an annual basis. While the broader repairs and maintenance budget has managed to mitigate some of the financial pressures stemming from subcontractor expenditure, the task of keeping expenditure within the existing budget limits is becoming progressively more difficult. Moreover, additional pressures faced by the HRA, such as addressing issues like damp and mould and complying with new building safety requirements, are likely to further burden HRA finances. Consequently, it has become increasingly vital to establish mechanisms that enable management to regularly assess and regulate activities, ensuring effective budget management and expenditure is kept within its budget envelope. In the event expenditure cannot be contained within allocated budgets then any financial pressures would represent growth to the HRA and it may become necessary to find savings from major works (capital) or from day-to-day landlord activities such as housing management.

11.2. Legal Implications

- 11.2.1. The council is responsible for undertaking the repair, maintenance and improvement of its housing properties and installations therein (Part 2 of the Housing Act 1985 and sections 9A and 11 of the Landlord and Tenant Act 1985). Failure to carry out repairs is a breach by the Council of its repairing covenants in the individual tenancy agreements and can be enforced through legal action.
- 11.2.2. The Council has power to enter into such contracts under section 1 of the Local Government (Contracts) Act 1997 on the basis that such services are properly required for the discharge of the Council's functions.

- 11.2.3. This procurement is subject to the requirements of the Public Contracts Regulations 2015 (PCR) on the basis that its estimated value exceeds the minimum threshold for services, so the procurement needs to be compliant with the PCR.
- 11.2.4. The recommendation to this report seeks approval for a Procurement Strategy, which is to use a lot from a framework established by Fusion 21. The proposed framework has been reviewed by a legal officer for scope, period of validity and process, and it is considered that the Council's intended use is lawful as being within the terms of the framework. The main proviso is that the Council must follow any rules of the framework as prescribed when it was first established around selection of award criteria. Officers should also check with Fusion 21 that the value of all call offs awarded under the framework has not exceeded the value stated in the contract notice of £250m across all the framework lots, though this is probably unlikely as the framework only commenced on 1 October 2022.
- 11.2.5. Under the Public Services (Social Value) Act 2012, the Council are under a duty to consider how what is proposed to be procured might improve the economic, social and environmental well-being of its area, and how, in conducting the process of procurement, it might act with a view to securing that improvement.
- 11.3. **Environmental Implications and contribution to achieving a net zero carbon Islington by 2030**
- 11.3.1. Requirement to stock non-oil-based products for health and safety reasons which will also have environmental benefits.
- 11.3.2. Waste management policies and procedures. Ensuring the service meets hazardous waste, Waste Electrical and Electronic Equipment (WEEE) and Duty of Care Regulations especially in terms of WEEE disposal, asbestos and the environmental cleaning service.
- 11.3.3. Chosen supplier to have robust waste management policy and practices in place.
- 11.3.4. Encourage use of vehicles which release fewer pollutants, where this is possible and to minimise journeys through efficient stock management.
- 11.3.5. Encourage supplier to use energy, water saving and recycling measures.
- 11.3.6. Pollution prevention – ensuring the service minimised the number of pollution incidents to land, water and air through well managed procedures and operational controls. The service/supplier needs to implement a certified Environmental Management System certified to ISO14001.
- 11.3.7. Whole life costing of products purchased; especially in terms of products that require energy to function and the cost of parts for repair.

11.4. **Equalities Impact Assessment**

- 11.4.1. 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.
- 11.4.2. An Equalities Impact Assessment was completed in May 2023. It is anticipated that the delivery of this service will not have any negative impact on any persons within the protected characteristics groups. It is important that the individual needs of residents be considered as part of the contract's delivery, in particular the needs of disabled people, such as those with mobility, visual or hearing impairments. The EQIA is appended to the report.

12. **Conclusion and reasons for the decision**

- 12.1. It is recommended that a Legal Disrepair Works contract is procured through the Procurement for Housing Responsive Repairs and Voids DPS to replace the existing contract.
- 12.2. This contract is required to ensure the continued delivery of the Council's in-house legal repairs service.

13. **Record of the decision**

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

Signed by:

Date:

Appendices:

- Equalities Impact Assessment

Background papers:

- None

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