

HOUSING CABINET MEMBER MEETING

Agenda Item 63

Brighton & Hove City Council

Subject:	Water Hygiene Contract		
Date of Meeting:	11 November 2009		
Report of:	Director of Adult Social Care and Housing		
Contact Officer:	Name:	Peter Matthews	Tel: 29-3370
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Key Decision:	Yes	Forward Plan No. HSG 12839	
Wards Affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1. The Council has a duty as Landlord to ensure the quality of water supplied to its residents, and in particular to take appropriate measures to control conditions that might give rise to development of Legionella bacteria in systems that could cause Legionnaires Disease. This requirement is contained in the revised Approved Code of Practice (ACOP) and guidance "Legionnaires' disease: The control of legionella bacteria in water systems" otherwise known as L8.
- 1.2. To comply with its legal duties, the council should:
 - (a) identify and assess sources of risk
 - (b) prepare a scheme for preventing or controlling the risk;
 - (c) implement, manage and monitor precautions
 - (d) keep records of the precautions.
- 1.3. The actions listed in 1.2 above are considered to be of a specialist nature requiring the services of an expert contractor. This report seeks authority to procure and enter into a contract with such a contractor.
- 1.4. The Council's Constitution requires that procurement of goods or services valued in excess of £500,000 shall be authorised by the relevant Cabinet Member.
- 1.5. It was originally considered that the value of this contract was unlikely to be in excess of the above threshold. Subsequent advice received by officers concerning changes in relevant legislation requires the proposed contract to be significantly extended in scope, and thus likely to exceed the threshold. The services to be procured are required for the continued safety of residents and for the Council to be compliant with water safety regulation.

2. RECOMMENDATIONS:

- (1) That the Cabinet Member approves the procurement of a term partnering contract for the provision of water hygiene services and risk assessment in accordance with ACOP L8 for a term of 10 years.

- (2) That the Cabinet Member authorises the Director of Adult Social Care and Housing to enter into a suitable contract with the successful tenderer following an approved procurement process.
- (3) That the Cabinet Member authorises the Director of Adult Social Care and Housing to take all steps necessary or incidental to the implementation of recommendations (1) and (2).

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 Legionnaires disease is a rare but potentially fatal disease akin to Pneumonia. It is caused by the inhalation of bacteria. Legionella bacteria can proliferate in water systems that are not properly controlled and maintained. If water droplets from an aerosol (spray) of contaminated water are inhaled, the disease can progress.
- 3.2 At present the Council has a contract for water hygiene in its major housing premises that maintains the quality of water in stored systems (larger water tanks). This current contract does not provide the range of services required by the Approved Code of Practice.

Officers were originally procuring a replacement contract for those properties with large water storage tanks, but recent advice is that the contract scope should be significantly extended to provide a service to all housing properties.

- 3.3 This advice is contained in two Health & Safety Commission publications: "Legionnaires' disease -The control of legionella bacteria in water systems" and "Essential information for providers of residential accommodation". Both publications are provided as background documents.
- 3.4 Officers recommend the procurement of a specialist contractor to provide the Risk Assessment, Control Measures and Maintenance required by the ACOP to all housing properties where there is a reasonably foreseeable risk of legionella growth. The new contract is proposed to be a term partnering contract for a period of five years with provision for extensions to a maximum term of ten years to be aligned with the new Housing Repairs and Maintenance Term Contract.
- 3.5 The method of procurement will be in compliance with the Public Contracts Regulations 2006 with a planned contract commencement date of 1 April 2010.
- 3.6 Officers consider that there is a reasonably foreseeable risk in all its larger properties where stored water is present. Following the advice contained within the guide "Essential information for providers of residential accommodation", officers consider that there is a low risk in relation to smaller properties and single units of accommodation, and proposes a different strategy in relation to the council's duties in these properties.
- 3.7 The specialist contractor procured will be responsible for a full survey and risk assessment of blocks of flats, and for subsequent reassessments. The contractor will also be responsible for routine testing, maintenance and water hygiene works at those blocks of flats.

- 3.8 In relation to smaller properties, officers propose that risk assessment should be carried out by suitably trained surveyors under the new Housing Repairs and Maintenance Term Contract as part of the scheduled Housing Health and Safety Rating System services included in that contract.

4. **CONSULTATION**

The advice of the corporate Health and Safety Team Legionella Manager has been sought in the development of the Housing Legionella Control Strategy and proposed contract specification.

5. **FINANCIAL & OTHER IMPLICATIONS**

Financial Implications:

- 5.1 The Water Hygiene contract is estimated to be in the region of £2 million over the 10 year period. This estimated sum includes capital works for the replacement and maintenance of systems and revenue items such as risk assessments and annual cleaning and maintenance. A small proportion of these costs will be recharged to leaseholders through their service charge. This contract will commence on 1 April 2010 and the appropriate costs and income will be included in the 2010/11 capital and revenue budgets which will be approved in February 2010.

Finance Officer Consulted: Sue Chapman

Date: 13/09/09

- 5.2 Legal Implications:

This contract has elements of both works and services within it, but for the purposes of the EU Procurement Directive and corresponding UK Regulations, the relevant threshold to be applied is that for services (£139k) as it is lower. The anticipated value of this contract is therefore well in excess of that threshold, over which such contracts must be procured in accordance with the Directive and Regulations. Contracts over £75,000 must be in a form approved by the Head of Law. The Council must take the Human Rights Act into account in respect of its actions but it is not considered that any individual's Human Rights Act rights would be adversely affected by the recommendations in this report.

Layer Consulted: Alison Leitch

Date: 18 September 2009

Equalities Implications:

- 5.3 Legionella is particularly dangerous to people who have ongoing respiratory issues, those with reduced immunity and to elderly people. The delivery of the contract will prioritise sheltered properties where residents are particularly likely to be susceptible.
- 5.4 The contractor will be required to comply with the Council's policies on equality. The contractor will also be required to participate in periodic equalities monitoring.
- 5.5 (Impact Assessment to be completed)

Sustainability Implications:

- 5.6 The contractor will be required to provide a waste Management Strategy statement. The contractor will similarly be required to demonstrate how waste materials and water will be minimised, and where necessary controlled to prevent any environmental damage.

Crime & Disorder Implications:

- 5.7 This report does not have implications with respect to crime or disorder.

Risk and Opportunity Management Implications:

- 5.8 A key output of this proposal is the assessment of risk of legionella in water systems, and the provision of measures to eliminate those risks.
- 5.9 The form of contract will be the ACA Term Partnering Contract. (TPC) 2005, as amended 2008 Risk management is fully integrated within that contract.
- 5.10 Legislation requires that all tenanted properties are assessed for the risk of legionella. In addition to this assessment, this contract takes the opportunity to provide a register of assets to further the council's knowledge of its housing stock.
- 5.11 The proposed contract will be aligned with the recently procured Housing Repairs and Maintenance Contract and the contractor will be required to participate in the associated Strategic Alliance of Contractors. This Strategic Alliance is being developed to further the council's strategic aims and objectives and to maximise the opportunities afforded by shared working.

Corporate / Citywide Implications:

- 5.12 The contract will reduce the risk of legionnaires disease in the City.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 The alternative of not assessing and managing legionella risk is not tenable as legislation requires that this action be taken.
- 6.2 The use of alternative forms of contract has been considered. Officers recommend the use of the TPC 2005 (amended 2008) form of contract as this will align with other term partnering contracts procured and being procured. The TPC contract contains provision for the formation of an overarching Strategic Alliance of Contractors that provides enhanced cooperation between the members.
- 6.3 The option of carrying out the risk assessments in house has been considered. This option would require the recruitment and retention of a highly trained individual and would also require the procurement of a specialist contractor to deliver the operational aspects of this proposal. It is recommended that a comprehensive water management service should be procured.

- 6.4 The option of including all tenanted properties within this contract was considered. Officers recommend that the risk of legionella developing in individual dwellings is likely to be very low, and therefore the additional cost of inclusion in this procurement would not represent good value for money. Officers therefore recommend that the newly procured Repairs and Maintenance contractor should carry out single property risk assessment as part of their HHSRS duties as described at clause 3.7

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 Recommendation (1) is made as this is a requirement of current Health & Safety legislation.
- 7.2 Recommendation (2) is made to progress the procurement to contract as rapidly as possible avoiding the potential for long delay that might be caused due to the period of time between cabinet member meetings in the New Year.

SUPPORTING DOCUMENTATION

Appendices:

1. There are no Appendices to this report

Documents In Members' Rooms

1. See below

Background Documents

1. "Legionnaires' disease -The control of legionella bacteria in water systems" published by the Health and Safety Executive
2. "Essential information for providers of residential accommodation" published by the Health and Safety Executive

