

LONDON BOROUGH OF HAMMERSMITH & FULHAM

Report to: Cabinet Member for Housing and Homelessness, Councillor Frances Umeh

Date: 14/01/2025

Subject: Procurement Strategy and Contract Award approval of a contract for the provision of water hygiene and legionella management services in communal, domestic water systems

Report author: Mara Akrivlelli, Commissioning and Contract Lead

Responsible Director: Richard Shwe, Director of Housing

SUMMARY

Over the past year, Officers have tried a number of options to procure this contract to renew the provision of water hygiene and legionella management. The contract will encompass the systematic management control system, evidenced through regular inspections, necessary remedial works, written scheme, and other records. The rationale of the contract is to ensure that the council are compliant with Health and Safety, Control of Substances Hazardous to Health and Approved Code of Practice (ACOP) L8 – Prevention of Legionella regulations and guidance.

The Director of Housing and officers have been frustrated that the marketplace for contract management of such services has resulted in discussion with the Cabinet Member of Housing and Homelessness giving different options over the past year, including using a framework that sourced an alternative provider which has unfortunately not materialised. This was due to the Lot structure only being able to deliver on the testing and remedial scope and not the risk assessment scope.

The Director of Housing, and its senior management team in compliance, which included the Head of Mechanical and Electrical, Assistant Director of Residents and Building Safety, have now reassessed with colleagues in the Council's Procurement Team to make the decision to continue the contractual agreement with the incumbent supplier for a further 12 months, while at the same time review the procurement process to engage into a more appropriate longer contract.

This report seeks approval of a Procurement Strategy and Contract Award to award a contract via a waiver to the Contract Standing Orders for a 12-month contract, to the incumbent supplier, HSL at a value of £600,000.

RECOMMENDATIONS

1. It is recommended that the Cabinet Member for Housing and Homelessness, approves the Procurement Strategy and Contract Award to award a 12-month contract, to the incumbent supplier, HSL at a value of £600,000.
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Wards Affected: All

Our Values	Summary of how this report aligns to the H&F Corporate Plan and the H&F Values
Building shared prosperity	Maintaining health and safety through the effective monitoring and management of the legionella bacteria is fundamentally important for public health and the wellbeing of H&F residents. Additionally, the inclusion of social value in the contract will ensure that the supplier will commit to delivering social value outcomes which will benefit the local communities and contribute to a shared prosperity.
Creating a compassionate and inclusive council	The Council, as a social landlord, has an obligation to ensure the health and safety of its residents, some of whom are particularly vulnerable due to age, disability, ill health, and low income. Managing a potential public health risk, such as legionellosis, effectively, will safeguard the residents' health and wellbeing, enabling them to thrive. Furthermore, it creates a people centric, caring and compassionate authority.
Doing things with local residents, not to them	The contract will stipulate high standards of resident communication throughout its term.
Being ruthlessly financially efficient	Based on assurance from robust contract management, it is anticipated that high quality standards and value for money will be achieved.
Taking pride in H&F	The Council is actively working to promote health and safety and wellbeing of its residents and visitors. This is achieved by ensuring the necessary systems are in place to prevent and minimise potential, risks to health, such as legionellosis, so that the public have assurance that living or visiting H&F is a positive experience.

Our Values	Summary of how this report aligns to the H&F Corporate Plan and the H&F Values
Rising to the challenge of the climate and ecological emergency	Throughout the term of the contract, the Mechanical and Electrical service will look at improvement opportunities within the contract, to drive improvement in this area. The proposed supplier can offer a remote monitoring system which will result in fewer physical visits to the site and a more positive carbon delivery model.

Financial Impact

The works are anticipated to take place in the 2024/25 financial year at a total cost of £600,000.

Of the total cost, the service estimates that £300,000 will be spent on upgrade works of the distribution pipework and converting sites on to a mains-fed system. The spend is capitalisable as the works are expected to enhance the distribution pipework and therefore extend the life of the Council's residential premises. The HRA Asset Management 4-Year Capital Programme for 2024-28 was approved by Cabinet in February 2024 and contained a budget provision for safety works improvement schemes, of £54.798m across financial years 2024/25 to 2027/28, of which £322,472 has been set aside for water supply upgrade works in 2024/25. This is sufficient to cover the cost of the procurement in this report.

The anticipated revenue costs for this work of £300,000 will be funded from the existing approved budget of £331,000 per year. Previously this work was to be awarded to ICOM Water Hygiene from October 2024 but the contract was not awarded and this report seeks approval to award to the current provider. Payments are expected to be made to the contractor only upon the satisfactory completion of the works. The Mechanical and Electrical team will monitor the progress of works and will withhold monies in the event that works are completed to an unsatisfactory standard.

Finance officers will work closely with the budget holders to monitor spend within the agreed budget envelope and will report updates to the financial position via the quarterly Capital Programme Monitor.

A Credit Safe Report run on 8th November 2024 on the supplier HSL Compliance Ltd provided a credit score of 92 (very low risk) and a suggested annual contract limit of £1,650,000, which is more than the value of the procurement.

Anjeli Chadha, Principal Accountant – Housing Capital, 13th November 2024
Mark Collins Principal Account Revenue – Resident & Building Safety

Verified by Danny Rochford, Head of Finance (Housing), 19th November 2024

Legal Implications

The Council has a legal obligation to provide these services, to comply with the Control of Substances Hazardous to Health Regulations 2002, and the Health and Safety Executive Approved Code of Practice on managing legionella.

The value of the contract means that the Public Contracts Regulations 2015 (PCR 2015) apply to the procurement. This would require advertising and competition requirements to be complied with. However, the negotiated procedure without prior publication (i.e., a direct award) can be used when the following condition applies

Regulation 32(2)(c):

“insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with.”

The failure of the procurement under the relevant framework could not have been foreseen. The need to award the contract is a matter of extreme urgency, as the Council needs these services to comply with health and safety legislation. In the circumstances, an award using the negotiated procedure without prior publication is permissible.

This is a high value contract for the purposes of the Council’s Contract Standing Orders. This requires advertising and competition for a contract of this value and therefore a waiver of contract standing orders is required.

Details of the contract award need to be included on the corporate contracts registered and a contract award notice published on Contracts Finder.

This is a key decision and needs to be included in the key decision list on the Council’s website.

John Sharland, Assistant Director of Legal Services, 29th October 2024

Background Papers Used in Preparing This Report

None

DETAILED ANALYSIS

Proposals and Analysis of Options

1. A thorough governance process was undertaken and engagement with a compliant third-party framework, to compliantly source an alternative supplier to manage the legionella risk contract which ended on Tuesday, 15th October 2024.

2. We engaged with the highest ranked supplier who expressed an interest, and on governance clearance, we were ready to award the contract, however, due to unforeseen circumstances, we could not award the contract compliantly, as the lot would not have delivered on the full scope of works and services we have requested. The relevant lot included remedial works and testing, but not risk assessments. The risk assessment element is an essential part of compliance, and its omission would have exposed the service and the authority to risk. To minimise this risk effectively and safeguard the authority's financial interests and reputation, decisive action had to be taken to find an interim solution which achieved regulatory compliance and concurrently allowed service continuity.
3. To rectify any gaps in service provision and comply with Health and Safety regulations, we now require the incumbent contractor, HSL, to urgently undertake works associated with the management of Legionella in the council's domestic and communal water systems. The contract will encompass remedial works resulting from regular testing and risk assessments. The proposed interim contract will be for a period of 12 months, starting on Wednesday, 16 October 2024 and ending on Wednesday, 15 October 2025.
4. We have an established relationship with HSL, who have previously undertaken these works to a satisfactory standard. The proposed undertaking will allow the seamless service continuity we require.
5. On a wider note, within the Housing compliance service area, we have several contracts that expire in 2027.
6. The service will use the time between now and then to review its holistic delivery model to ensure that service areas such as: Electrical, Water Hygiene, Lifts and Asbestos repairs and maintenance services are commissioned in a proactive manner so that health and safety, quality and value for money outcomes are achieved in a long-term and sustainable fashion.
7. This commissioning plan will be developed and entered onto the forward plan in 2025. It will include the medium and long-term arrangements of the Legionella contract upon contract expiry in October 2025.

Options

8. **Option 1: Undertake a full regulated procurement process, advertised to the market to identify a long-term Legionella contractor – Not recommended**

This is not a viable option as an open tender can take several months to complete before a contract award can be made. We do not have sufficient time to plan our commissioning and contract route to market. Proceeding with a procurement at this stage is untenable, as there is insufficient time to source a new supplier and mobilise the contract while also ensuring value and quality outcomes.

9. **Option 2: Procure using a compliant framework or Dynamic Purchasing System (DPS) – Not recommended**

This had been our preferred option, due to the expediency of the process, but given the circumstances set out in paragraph 2 of the detailed analysis, we are unable to utilise this option as it would not have been applicable to our service specification and would not have achieved full compliance.

10. **Option 3: Directly award a 12-month interim contract to the incumbent supplier, using the negotiated procedure without prior publication – Recommended**

Due to the circumstances outside the council's control, and the significant health and safety risks associated with not having a contractor to provide this service, we are recommending awarding a contract to the incumbent supplier, HSL for a period of 12 months. This will achieve service continuity and stability and will minimise compliance risks while allowing sufficient time to analyse long-term options and plan a longer-term procurement strategy, enabling compliant procurement of the service. The incumbent supplier's performance has been satisfactory and has delivered on agreed outcomes.

Reasons for Decision

11. The monitoring of the Legionella bacteria and remedial works must be undertaken under the Landlord and Tenant Act 1985, the Health & Safety at Work Act 1974, the Control of Substances Hazardous to Health Regulations 2002 and the supporting Approved Code of Practice (ACOP) L8-Prevention of Legionella Regulations. It is a requirement that regular inspections and maintenance of communal hot and cold-water systems are carried out to minimise the risk of the proliferation of Legionella bacteria and to carry out any associated remedial works. The contract will ensure that all communal hot and cold-water installations within H&F housing properties comply with these regulations.
12. Maintenance of safe water systems in the Council's housing portfolio is dependent on the appointment of a suitably accredited and experienced Legionella Management contractor. The decision to re-appoint HSL, a suitably qualified contractor, for a period of 12 months is the most reasonable interim solution.

Equality Implications

13. As a landlord of social housing, there is a higher proportion of vulnerable residents in the properties to which these services pertain to. The outcomes of this contract will ensure that safe housing infrastructure is in place for these residents.

14. It is not anticipated that the approval of these proposals, as set out in the recommendations, will have any direct negative impact on any groups that share protected characteristics under the Equality Act 2010.

Yvonne Okiyo, Strategic Lead Equity, Diversity and Inclusion 07.11.24

Risk Management Implications

15. Based on the nature of the award to HSL there are a number of significant risks associated to performance and as a result to public health. There is a programme risk that HSL noting that they were not the chosen contractor, and that they have only been awarded a single year's extension do not discharge their duties correctly resulting in public health, compliancy and reputational risks. Furthermore, that this contract is made directly and at pace has not allowed a reasonable amount of time to offset the risks as they stand as an adequate assessment of HSL has not been made.
However to reduce the risks, it is proposed that regular independent checks are made of work completed, project management and communications as well as, and most critically to verify the absence of legionella in properties that have been worked upon by HSL.

Jules Binney, Risk and Assurance Manager, 6th November 2024

Climate and Ecological Emergency Implications

16. HSL will work with LBHF to help reduce their carbon emissions and assist with their energy reduction by working to make their energy usage as efficient as possible through green initiatives.
17. Wherever possible the contractor should also minimise water use and hot water production, identify opportunities for energy efficiency, aim to use biodegradable and eco-friendly products, implement sustainable materials to reduce waste of single use items and focus on sustainability for the replacement of defective products (repair, reuse, recycle).

Hinesh Mehta, Assistant Director Climate Change, 15/11/2024

Procurement Implications

18. The Procurement and Commercial team have confirmed this Contract Award is written in accordance with the waiver presented to the Contracts Assurance Board (CAB) on Wednesday, 23 October 2024. Any further waivers for this requirement will be subject to the rules of aggregation and the requirements of the [Public Contracts Regulations 2015](#) or [Procurement Act 2023](#) may become applicable, based on the aggregated value.
19. The Council should consider the publication of a Voluntary Ex-Ante Transparency (VEAT) Notice (affording the principle of standstill for procurements where a contract was not subject to competition).

20. A Contract Award Notice must be published to Contracts Finder, to satisfy the requirements of the [Public Contracts Regulations 2015](#) for contracts equal to and over £30,000 (including VAT). This must be completed using the Council's [capitalEsourcing](#) eProcurement portal.
21. The contract must be added to the [capitalEsourcing](#) eProcurement portal, to ensure it is published on the Council's [Contract Register](#) in line with the legislated transparency obligations.
22. A named contract manager must be allocated to the contract on the Council's [capitalEsourcing](#) eProcurement portal.

Chris Everett, Category Lead – Procurement and Commercial, 6th November 2024

Local Economy and Social Value Implications

23. Provision of Social Value is not included in this contract, however the commissioning team have requested that the supplier provides 10% social value as part of the extension. These will be agreed as part of the contracting stage.
24. It is recommended that the commissioner works closely with the Legal Service to ensure appropriate social value clauses are included in the contract so that the council can enforce its right to remedies if social value commitments are not delivered.

*Implications completed by Oliur Rahman, Head of Employment and Skills,
7th November 2024*

LIST OF APPENDICES

NONE