

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Housing and Environmental Services 28 April 2008
Portfolio holder

AUTHOR/S: Corporate Manager Affordable Homes

THE RESPONSIVE REPAIRS AND IMPROVEMENTS CONTRACT

Purpose

1. To advise on the options for the responsive repairs contract for a decision. The options are:
 - (a) To re-tender the contract in October 2008
 - (b) To extend the contract for one year until October 2009
 - (c) To allow the contract to expire in October 2008 and enter into a service level agreement with the Council's Direct Labour Organisation (DLO).

Background

2. The current Responsive and Void repairs contract was let in 2004 and is due to expire in October 2008. There is, however; an option within the contract conditions to extend the contract for one further year.

“ The Contract will be for a period of four (4) years to commence from 1 October 2004 (“Contract Period”). However, after four (4) years of satisfactory performance from the successful Tenderer the Council will have the right, but not the obligation, to extend the Contract for a further period of one (1) year.”
3. Two thirds of the district's responsive repairs service (east and west areas) are currently provided by the Council's own DLO, and one third (south area) is provided by Cambridge City Council's City Services DLO.
4. The current contract was let on the basis of a bespoke schedule of rates (SoR) with the DLO's rates being more than 10% cheaper than Cambridge City Services.
5. The current performance results of the DLO is very good; it is consistently meeting or exceeding targets for customer satisfaction (currently 98%) and completion on time performance. The performance of the City Services is similarly high.
6. The Council is now entering into the second phase of the Housing Futures process; this is an exceptional period for the Council as it consults on the future ownership of the housing stock. In particular it is recognised that there is significant tenant support for the DLO and that the offer to tenants is likely to include the DLO being retained as part of the new housing association.

Current considerations

7. The re tendering of the responsive repairs contract provides an opportunity to meet the current Gershon efficiency targets for 2008/09 onwards.
8. Because the DLO does not have its own legal identity there is an option to retain the responsive repairs work without re tendering the contract. This is permissible under the EU Procurement Regulations.
9. As the works are not over £3.4 million there is no need to undertake an EU Procurement Procedure. However the Council's policy on procurement of services requires an options appraisal to be carried out by officers outside the service if the intention is to consider not re tendering. This would also be subject to Scrutiny Committee consideration. Advice from the Council's contract specialist is that the contract that is awarded to City is likely to require re-tendering.
10. If the decision were made to award the contract to the DLO it would be appropriate to set up a Service Level Agreement which clearly defines the standards and performance that will be expected. The performance, competitiveness and satisfaction rates of the DLO then can be benchmarked against this rather than external competition and will provide a clear audit trail for any Best Value review.
11. If the City contract is not re awarded then TUPE will apply. The 'Test' will consider if there has been a relevant transfer and will be based on factors such as whether an activity/duties previously carried out by one employer have been taken over by another employer. There is a relevant case law. BSG Property Services v Tuck (1996) involving staff from a DSO at Mid Bedfordshire DC where the Employment Tribunal considered the aspect of a relevant transfer. On this basis City Council staff could argue successfully that TUPE applies in the event of a change of contract.

Options

12. Option 1. Re-tender the contract in October 2008

Reasons for:

- (a) The recent tendering of decent homes contract has produced very competitive rates; this suggests that the Council may achieve better value for money for its responsive, voids, minor works, and aids and adaptations works by re-tendering the contract. This could help deliver Gershon savings.
- (b) The DLO management believe it is in a reasonably good position to submit a winning tender bid thereby securing an increased income for the DLO.

Reasons against:

- (c) There is a risk that the DLO might not be successful in securing this contract which would result in staff being TUPE'd out of the Council employment during the housing futures process. This would be very unpopular with tenants and may cause confusion during the Housing Futures process.
- (d) The procurement process itself could prove a significant distraction during the Housing Futures process.

13. Option 2. Extend the existing contract until October 2009

The current contract could be extended as it stands with both the DLO and City Services continuing with their respective areas.

Reasons for

- (a) The current quality of service is high.
- (b) By October 2009 the matter of the future ownership of the housing stock should be resolved, so the Council or new owner could be much clearer about future funding and service arrangements when re-tendering. In the event of a yes vote the decision would become one for the new landlord and would be guided by promises made in the 'offer document'.
- (c) The contract is an important one for the Council and potentially complex. Ensuring that the re tendering process happens after the Housing Futures project will enable the process to receive the level of attention that is appropriate.

Reasons against

- (d) The opportunity to achieve Gershon savings in 2008/09 would be lost but would still be possible in future years.

14. Option 3. Award the DLO the district wide responsive repairs and improvements contract based on competitive benchmarked rates

Reasons for:

- (a) Gershon savings could be achieved in the HRA for 2008/09. By using a nationally recognised contract framework such as the Rand MTC it is possible to get nationally benchmarked rates for works carried out using this document. This way a negotiated rate in line with the national trend could be established and used assuring best value to the Council without re-tendering.

Reasons against:

- (b) The Council's current policy requires that an external options appraisal be carried out with the likelihood of this recommending that the City contract be competitively tendered.
- (c) The Audit commission has in the past been critical of Councils and RSLs that have not market tested their DLOs.
- (d) TUPE obligations are most likely to be applicable if the current contract expires without a formal contract to replace it. Should this be the case the Council may well have an obligation to take on some or all of the City Services staff working on the current contract (currently believed to be up to eight staff).

Considerations

15.	Financial	There is a potential to achieve Gershon efficiencies in re tendering this contract
	Legal	As discussed in the report.
	Staffing	As discussed in the report – there are potential TUPE implications.
	Risk Management	The risk in re-tendering during 2008 is the possibility that the DLO is unsuccessful in its bid – this may have a negative effect on the Housing Futures project.
	Equal Opportunities	N/A

16. The current Standing Orders allow for a measure of flexibility at the end of contracts to allow sufficient time to complete a procurement process. This provides the Cabinet with the authority to extend timeframes if necessary.

“4.5 single tenders:

The council considers it desirable in the best interests of the Council that a tender be invited for the execution of work from a contractor selected by it or negotiated with a contractor already engaged by the Council. For this purpose the Executive shall have the authority to act on behalf of the Council.”

17. For the responsive repairs contract this will allow the current contractors time to complete a competitive procurement process in the event of a stock transfer no vote early in 2009 or time for the new landlord to set up its responsive repairs arrangements in the event of a yes vote.

Consultation

18. Consultation has taken place with the DLO Management Board.

Effect on Annual Priorities and Corporate Objectives

19.	Affordable Homes	None
	Customer Service	Potential for improved customer service through new contract conditions
	Northstowe and other growth areas	None
	Quality, Accessible Services	Potential for improved quality through the new agreement
	Village Life	Potential for improved maintenance to village homes
	Sustainability	None
	Partnership	None

Conclusions

20. Re tendering the contract in 2008 will be a distraction during the Housing Futures process
21. Attempting to award the contract in house is a complex path likely to include an options appraisal, a partial competitive process and TUPE considerations.
22. Gershon savings will still be possible from 2010/11 should there be a no vote to transfer.

Recommendation

23. It is recommended that the Housing and Environmental Services Portfolio Holder proceed with Option 2, to extend the existing contract until October 2009.

Background Papers: No background papers were used in the preparation of this report:

Contact Officer: Brent O'Halloran – Property Services Manager
Telephone: (01954) 713050
brent.ohalloran@scambs.gov.uk