
Meeting: Executive
Date: 15 November 2011
Subject: Housing Services Responsive Repairs Contract
Report of: Cllr Carole Hegley, Executive Member for Social Care, Health and Housing

Summary: The report outlines the actions taken to ensure business continuity and minimise risks following the notification from the Responsive Repairs contractor that they were withdrawing from the Council's contract one month from 1 October 2011.

Advising Officer: Julie Ogle, Director of Social Care, Health and Housing
Contact Officer: Tony Keaveney, Assistant Director Housing Services
Public/Exempt: Public but with an exempt appendix under category number 3 "information relating to the financial or business affairs of any particular person (including the authority holding that information)".

Wards Affected: All wards in the south of Central Bedfordshire
Function of: Executive
Key Decision Yes

Reason for urgency/ exemption from call-in (if appropriate) An emergency interim contract has been approved to ensure that tenants of the Council can continue to report repairs needed to their home and to ensure that the Council can provide an appropriate service, ensuring health and safety requirements are met. The Council's constitution requires Executive to be informed of the award of the emergency contract.

CORPORATE IMPLICATIONS

Council Priorities:

The actions support the Council priorities:

- Supporting and caring for an ageing population.
- Managing growth effectively.
- Creating safer communities.

Financial:

1. The value of the remainder of the current contract is approximately £1.583 million. Alternative arrangements will involve “set up costs” from a new service provider and these have been examined within the emergency contract evaluation process.
2. It is anticipated that set up costs for the preferred emergency contractor, and legal and management costs for the Council, will be met by a financial penalty to be paid by the former contractor in the exit agreement between the two parties.

Legal:

3. The Repairs contract does not provide for either party to give one month’s notice to leave the contract. The Council has been in a strong position to negotiate a “no additional cost” outcome for continuation of the service. Housing Services are being supported by legal advisors with expertise in contractual law.
4. The closure of the current contract and signing of a new, emergency repairs contract is delegated to the Head of Legal and Democratic Services.

Risk Management:

5. Legal advice has been obtained to minimise reputational risk to the Council resulting from the former contractor’s actions. Employees of the former contractor are at risk of unemployment. Consequently, the Council are ensuring that appropriate employment legislation requirements are met by the parties involved. The contract does, however, provide additional safeguards for the Council in respect of claims made by former employees.
6. Re-procurement of an emergency contract aims to reduce health and safety risks for our tenants and ensure business continuity for the Council.

Staffing (including Trades Unions):

7. It is possible that up to three former contractor employees will transfer to the Council under TUPE regulations. These employees are call handlers and the Council will directly manage the call centre operation. Advice from Human Resources has been followed to ensure legal requirements are met.
8. All contingency planning work has been undertaken within existing resources in Housing Services.

Equalities/Human Rights:

9. Officers will ensure that the new interim contractors comply with the equality and diversity requirements through their policies and actions. The repairs contract is the exact same contract but will be delivered by a different contractor. The new contract that is being procured for summer 2012 will be subject to a new Equality Impact Assessment.

Community Safety:

10. Not Applicable.

Sustainability:

11. Not Applicable.

Procurement:

12. The emergency responsive repairs contract has been procured in accordance with Council procurement requirements. Financial and quality assessments have been undertaken on three tendered bids for the remaining 10 month contract. The emergency contract was approved by the Director of Social Care, Health and Housing; the Chief Finance Officer; and the Executive Members responsible for Corporate Resources and Social Care, Health and Housing, on 17 October 2011.

Overview and Scrutiny:

13. This matter has not been considered by Overview and Scrutiny due to it being an emergency item. The Chair of Overview and Scrutiny has been informed of this matter and has confirmed her understanding of the emergency circumstances and support for the need for the report to be presented to Executive on 15 November 2011.

RECOMMENDATIONS:**The Executive is asked to:**

1. **note the actions taken by Housing Services to ensure as far as possible continuity of service and minimisation of risk to the Council; and**
2. **note the award of the emergency interim contract.**

<i>Reason for Recommendations:</i>	<i>To enable Executive to understand the actions taken to ensure service continuity and prevent risks to our housing tenants and the Council.</i>
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Executive Summary

14. The Responsive Repairs service responds to between 40 and 70 calls a days from tenants reporting repairs. In September 2011, the former contractors advised that they are losing money on the Council's contract and unless the Council agreed to an uplift of 20%, their intention was to "leave" the contract on 31 October 11. Formal notice was served on the 30 Sept 2011. The contract does not provide for either party to give one month's notice to terminate the contract. Advice has been obtained from Trowers and Hamlins law firm and Legal Services.

15. There are significant risks to the Council in terms of financial impact and business continuity, which in particular relate to Health and Safety. For this reason, the over-arching approach has been to manage the exit of the former contractor and to re-procure an emergency contract on the same terms as the current contract.
16. The Council, with advice from Trowers and Hamblins, set out its strong position in exit negotiations with the former contractors, which resulted in an “in principle” agreement for a clean break from the contract for 7 November 2011. This enables statutory TUPE consultation to be completed for employees affected and has been agreed by Human Resources. The “clean break” is not without financial penalty to the former contractors. This “exit payment” is consistent with the predicted costs that the Council will incur in awarding an emergency contract.
17. Housing Services have undertaken an emergency procurement exercise with three interested repairs contractors. The evaluation process includes a quality and financial assessment. The outcome of the evaluation is contained in the exempt appendix to this report.

Background

18. The Responsive Repairs service responds to between 40 and 70 calls a days from tenants reporting repairs. This contract is currently being re-procured jointly with Aragon Housing Association, and is at the Pre-Qualification Questionnaire stage. On 15 September 2011, the former contractors advised that they are losing money on the Council’s contract and that unless the Council agreed to an uplift of 20%, their intention was to give one month’s notice to “leave” the contract on 31 October 2011. Formal notice was served on 30 September 2011.
19. The contract does not provide for either party to give one month’s notice to terminate the contract. Consequently the Council are in a relatively strong negotiating position. Advice has been obtained from Trowers and Hamblins law firm and Legal Services.

Actions to ensure service continuity

20. The Housing Service has been considering contingency issues as part of an Improvement Plan, put in place following the inspection of Landlord Services in 2010. Trowers and Hamblins were commissioned to provide advice on managing risk during a period of re-procurement and have been retained to advise the Council on an exit strategy with the former contractors. This advice has been agreed by the Council’s Legal Services and also the Assistant Chief Executive – People and Organisation in relation to TUPE matters.
21. There are significant risks to the Council in terms of financial impact and business continuity, which in particular relate to Health and Safety. For this reason, the over-arching approach has been to manage the exit of one contractor and to re-procure an Emergency contract on the same terms as the current contract.

22. Negotiations resulted in an “in principle” agreement for a clean break from the contract for 7 November 2011. This enables statutory TUPE consultation to be completed for employees affected. It should be noted that the “clean break” is not without financial penalty to the former contractors. The company has agreed in principle to what amounts to an “exit payment”. This payment is consistent with the predicted costs that the Council will incur in awarding an emergency contract for a period of 10 months.

Financial implications and re-procurement

23. Housing Services have undertaken an emergency procurement exercise with three interested repairs contractors. The evaluation process includes a quality and financial assessment and is approved by Corporate Procurement team. The quality assessment is based upon interviews, site visits, written offers, and ICT evaluations. The financial evaluation is based upon the “set up costs” provided by each contractor. The contract evaluation is included in Appendix A (exempt report).
24. Although there will be set up costs, relating to the emergency contract, part of the “in principle” exit agreement with the former contractors includes a payment of approximately £80,000 as a consequence of their breaching the current contract by leaving with one month’s notice. The proposed £80,000 will offset costs incurred by the Council, including legal and management costs.
25. There will be an adverse impact on performance in the short term. The focus, in terms of business continuity is the emergency response repairs and priority 1 repairs. Tenant expectation will be managed, and the focus on mobilisation of the new contractor will be to keep tenants informed and to overcome the adverse impact on performance. The initial focus will be to return performance to the current level by the end of February 2012. The winter period could be a material factor. It is imperative to provide continuity of service and to manage risk particularly in terms of health and safety related repairs. It should be noted that the emergency response related to gas and electrical issues is provide by other contractors. Specific actions are summarised below;
- (a) As part of the exit agreement, the former contractors agreed to extend the period in which service is provided to midnight on Sunday 6 November 2011. This deals with specific points related to TUPE.
 - (b) Producing a contract agreement with the new contractor, on the basis of legal advice, as well as TUPE preparations with Human Resources advice. The current contract will be the basis of the new emergency contract.
 - (c) The formal, agreed Exit Agreement is to be signed off and sealed by the Head of Legal Services. This has been drafted by Trowers and Hamblins.
 - (d) Mobilisation of the new contractor is imperative, and it was important to move quickly from the negotiation phase (including a negotiated exit strategy) into a mobilisation phase.

- (e) Repairs calls will be taken and managed in house, in order to manage direct contact with tenants, and if necessary, to use other Housing Service contractors to undertake works, for reasons of business continuity. This will be subject to agreement with the new contractor.

Conclusion and Next Steps

- 26. The actions of the former contractor have required an urgent focus on an exit strategy, emergency procurement, and mobilisation within a very short time frame. The learning from this situation will be applied to other contracts, particularly in respect of contingency planning.
- 27. Housing Services are progressing joint procurement of a new responsive repairs contract with Aragon Housing Association. Learning from this situation will be considered in preparations for the new contract.
- 28. Housing Services intend to share learning and experience with colleagues across the Directorate and corporately.

Appendices:

Appendix A – Exempt Report Responsive repairs

Background Papers: (open to public inspection)

None