

Decision Maker: RENEWAL, RECREATION AND HOUSING PORTFOLIO HOLDER

Date: For Pre-Decision Scrutiny At The Renewal, Recreation And Housing Policy Development And Scrutiny Committee ON 16th March 2022

Decision Type: Non-Urgent Non-Executive Non-Key

Title: CONTRACT AWARD FOR STATUTORY HOMELESSNESS REVIEWS

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Chief Officer: Sara Bowrey

Ward: All Wards

1. REASON FOR REPORT

- 1.1 This document is a summary to Part 2 'Statutory Homelessness Reviews – Contract Award' to be considered by Renewal, Recreation and Housing Portfolio Holder on 16 March 2022.
 - 1.2 This summary provides an overview of the tendering process for the Statutory Homelessness Reviews Service in accordance with the Council's financial and contractual procedure rules.
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2. RECOMMENDATION(S)

- 2.1 The Portfolio Holder is recommended to award this contract, via direct award, to the suggested provider for a four year contract commencing June 2022 with an option to extend for up to two years

Impact on Vulnerable Adults and Children

1. Summary of Impact: This contract will enable vulnerable adults and children to access and understand the review process where a negative homeless decision is made, with support to actively engage in the process and make all necessary submissions.
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Corporate Policy

1. Policy Status: Existing Policy
 2. BBB Priority: Supporting Independence
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Financial

1. Cost of proposal: Estimated Cost: Detailed in the part 2 report
 2. Ongoing costs: Estimated Cost: Detailed in the part 2 report
 3. Budget head/performance centre: Operational Housing
 4. Total current budget for this head: £21k
 5. Source of funding: Existing Revenue Budget
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Personnel

1. Number of staff (current and additional): N/A
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: Statutory Requirement
 2. Call-in: Not Applicable
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Procurement

1. Summary of Procurement Implications: Direct award following tender process
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Up to 6,000 enquiries per annum of which up to 3,000 of these households are at imminent risk of homelessness; currently 1800+ households placed in temporary accommodation (under statutory rehousing duty), rising by up to 15 households per month.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: Not Applicable

3. COMMENTARY

- 3.1 Under Part VII of the Housing Act 1996, persons presenting as homeless who are in priority need and are not intentionally homeless are entitled to substantive assistance under the provisions of that Part of the Act. Any applicant who receives an adverse decision is entitled to a review of their decision and, if they remain dissatisfied with the decision on review, they are entitled to pursue a statutory appeal with the County Courts. Both types of decision are administrative decisions, not discretionary.
- 3.2 Regulation 5 of the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 requires the Council to notify the applicant in writing within 56 days of the outcome of the review decision. With the introduction of the Homelessness Reduction Act 2017, the opportunities for applicants to request a review have increased significantly with the increase in legal notification letters and Personal Housing Plans. The impact of this has not been fully felt yet, but it is expected to significantly increase as the new procedures introduced by the Act become more established, and we require a robust procedure to manage this demand.
- 3.3 Where the service is fully contracted out to enable the independent reviewer to investigate and also issue a s202 homelessness review decision this decision requires formal approval by the Executive. Proceeding to tender was approved by Executive in June 2021.
- 3.4 In order for the Council to retain control the final decision on all reviews undertaken by an external source will remain with the Council. Any external providers of this service will prepare the decision for approval and sign off by the relevant Lead Officer at the Council
- 3.5 As it would not be practicable to have a break in service or hand over reviews in progress from one external reviewer to another, a short extension may be required on the existing contract to enable current reviews already referred across at this stage to be concluded. Approval for the extension is within the delegated authority of the Chief Officer.

Service Profile / Data Analysis

- 3.6 Currently, Bromley Council's statutory review function is outsourced to an external provider. This has worked well for Bromley and has provided flexibility in meeting fluctuating demand. This contract expires 31 May 2022.
- 3.7 Recent legislation and case law findings have led to a significant increase on the current number of reviews having to be undertaken and there is not sufficient capacity in-house to meet the expected level of demand in terms of the statutory review investigations. As such, there has been an increased reliance on an external provider sufficient capacity to fulfil the Council's statutory review obligations.
- 3.8 The use of an external independent reviews service ensures that there is sufficient capacity to fulfil the Council's statutory reviews function within the prescribed timeframe of 56 working days. This helps to reduce the length of time households are waiting for a decision.
- 3.9 Figure 1 shows the number of reviews received in 2019/20 and also 2020/21. 2020/21 has not been a 'typical' year due to the COVID-19 pandemic. In terms of projected number of reviews, we expect around a 30-40% increase in the number of reviews.

Figure 1

Housing Reviews			
	2019/20	2020/21	Projected for future years (+35%)
S202 – reviews of homelessness application decisions	26	23	35
S202 – Suitability Reviews	18	16	24
S202 – Discharge of Duty	13	6	5
Housing Register Reviews	204	174	250 (expected to rise with new Allocations Scheme implementation)
Total:	261	219	314

Options Appraisal

Direct Award

- 3.10 In accordance with contract standing orders, It is proposed that the contract be directly awarded to the Provider via a negotiated process, using the current specification and ITT requirements (to remove any risk of challenge for those who did not bid based on the current ITT requirements but who might argue that they would have if those requirements were changed) and current provider bid. **This is the recommended option.**

Re-Tender

- 3.11 This service was tendered in October 2021, no bids were received. Further soft market testing took place and another potential provider identified. All known providers of this service were again contacted. This time one bid was received. There is nothing to suggest that retendering the service now, would garner any more bids than received in this and the previous tender. It would also entail a considerable outlay in officer time for minimal reward. For these reasons, **this option is not recommended.**

Do Nothing

- 3.12 The current contract terminates on 31 May 2022. The only alternative to contracting out the statutory review function is for the Council to employ a specialist housing review officer/s on a senior grade. Many local authorities keep an in-house service for the majority of reviews. However, given the number of reviews, this is not considered to be the best options in terms of value for money, neither is it responsive to the peaks and troughs in the workload. **This option is not recommended.**

Preferred Option

- 3.13 The direct award of this contract to the recommended provider would bring efficiencies and performance management expectations that will, in turn, improve the quality and accuracy of our service delivery to applicants. Therefore, **this is the preferred option.**

4. MARKET CONSIDERATIONS

- 4.1 This is a specialist area of work and as such there are only a very small number of organisations providing this service, in the main these are officers who were formerly local authority reviews officers who have set up small limited companies or consultancy arrangements to undertake reviews on behalf of local authorities. A small number of solicitors will also consider undertaking reviews to assist local authorities, usually on an ad hoc basis, but this model tends to be more expensive charged at a standard daily rate for the solicitor appointed.
- 4.2 In discussions with other boroughs operating a similar arrangement to the one proposed, the majority report that providers tend to focus on building relationships with the local authorities they work with as this ensures a full understanding of local priorities and procedures in order to ensure that decisions are robust and able to defend legal challenge in the local context.

5. SOCIAL VALUE AND LOCAL / NATIONAL PRIORITIES

- 5.1 [The Public Services \(Social Value\) Act 2012](#) requires providers to demonstrate how their service can provide additional social value in Bromley.
- 5.2 In their tender bid, **the potential Provider** referenced a number of ways in which they felt that their service could add social value. These included, recognition of vulnerable clients/complex needs, stakeholder experience, diverse team, environmental impact.

6. STAKEHOLDER ENGAGEMENT

- 6.1 Households requesting a review of their homelessness decision are some of the most vulnerable members of the community with high representation from particular equality groups; in particular vulnerable due to disability, mental health, pregnancy or young children and people including those leaving care.
- 6.2 We will be consulting with the current provider as well as other Local Authorities operating similar schemes to ensure that as many providers as possible are aware of the Council's intentions.
- 6.3 Support under this contract will enable vulnerable adults and families to engage fully in the review process ensuring that they are able to understand the legislation, procedures and actively make any representations they need to make to ensure their review is fully investigated and considered.
- 6.4 As this service currently exists there will not be an impact on other projects or IT or Customer Services; the current scheme and the way in which it operates is well established

7. PROCUREMENT AND PROJECT TIMESCALES AND GOVERNANCE ARRANGEMENTS

- 7.1 **Estimated Contract Value** – included in the Part 2 report
Estimated extension period for handover - included in the Part 2 report (as described in 3.5)
- 7.2 **Other Associated Costs:** N/A
- 7.3 **Proposed Contract Period:** 4 years with the option to extend for a further 2 years

7.4

Portfolio Holder Approval	Portfolio Holder/Council Members	16 th March 2022
Contract Mobilisation Completion	LBB Commissioners/Provider	May 2022
Contract Commencement Date	LBB Commissioners/ Procurement/ Successful Provider	01 June 2022

8. IMPACT ASSESSMENTS

- 8.1 The potential risk to the Council for not taking this course of action include the potential reputational and compliance risk that the Council has as a statutory obligation to complete s202 reviews with 56 working days. If this is not done and decisions are issued late, there are risks of judicial review actions which if successful, are very likely to result in considerable financial risk to the Council as well as causing reputational damage.
- 8.2 In the event that a future provider fails to meet it's contracted obligations the London Borough of Bromley would need to procure an alternative solution. This could cause some delay in the administration of case work but is not considered a significant risk.
- 8.3 External providers do however charge on a per case basis, and caseloads have been increasing each year. There is a risk that if caseloads continue to increase, there may be a time when it is a better value for money to revert to internal provision of this function
- 8.4 Sufficient contingency has been built into the budget to cover any sudden fluctuations in demand
- 8.5 The delegation of this function to a third-party provider represents good value for money and a low-risk solution to a statutory requirement.
- 8.6 In order for the Council to retain control the final decision on all reviews undertaken by an external source will remain with the Council. Any external providers of this service will prepare the decision for approval and sign of by the relevant Lead Officer at the Council.

9. POLICY CONSIDERATIONS

- 9.1 The Statutory Homelessness Reviews Service meets the Council's objectives within 'Building a Better Bromley' for Supporting Independence.
- 9.2 The current procedures comply with the legislative framework for statutory reviews and set out that that reviews will normally be referred to the independent reviewer with the Council retaining the option of undertaking the review itself. As such there would be no changes to the current arrangements and information given to applicants.
- 9.3 There are no children and vulnerable people impacts. An external review offers an impartial oversight of case decisions and has access to advocates, translation services in the same way as an internal service.
- 9.4 Any reviews undertaken by a third party will ensure the public sector equality duties are adhered to with regard to eliminating discrimination, advancing equality of opportunity and fostering good

relations.

10. IT AND GDPR CONSIDERATIONS

10.1 IT and GDPR have been considered and there is an established process and recording mechanisms already in place.

11. STRATEGIC PROPERTY

11.1 Not applicable

12. PROCUREMENT RULES

12.1 This report seeks to award a contract for the Provision of Homelessness Reviews Service to the preferred provider. The initial contract period is four years with options to extend for two periods of one year each, making a total possible contract period of six years, ending on 30 September 2028 if both extension clauses are utilised.

12.2 The process used is a Negotiated Procedure Without Prior Publication. This procedure was used after an initial open tender resulted in a nil response. The necessary authorisation was therefore obtained in compliance with CPR 1.5 to proceed with a Negotiated Procedure as provided for under CPR 3.2 and Regulation 32 of the Public Procurement Regulations, 2015.

12.3 Health, Social and related services are covered by Schedule 3 of the Public Contracts Regulations 2015, and thus any tender would be subject to the application of the "Light Touch" regime (LTR) under those regulations. This procurement was run as a below LTR threshold regime as the value was below the current threshold. A negotiated procedure was used following a nil return in an initial tender concluded tender. However, as with all LTR services, the Council has the flexibility to use any process or procedure they choose to run the procurement but must comply with the principles of fairness, transparency and non-discrimination applied proportionately.

12.4 Under the Council's Contract Procedure Rules, the Council's requirement for proceeding to Procurement and an award of Contract, must be in accordance with CPR 1.3 and CPR 16.

12.5 Since this is a direct award following negotiation, the award authorisation for a contract lies with the Portfolio Holder following agreement of the Budget Holder, Chief Officer, Assistant Director Governance and Contracts, Director of Corporate Services, and Director of Finance. In accordance with CPR 2.1.2, Officers must take all necessary professional advice.

12.6 As the contract value is above £25k an award notice will need to be published on Contracts Finder.

12.7 The actions identified in this report are provided for within the Council's Contract Procedure Rules, and the proposed actions can be completed in compliance with their content.

13. FINANCIAL CONSIDERATIONS

13.1 Financial considerations are detailed in the part 2 report.

14. PERSONNEL CONSIDERATIONS

14.1 N/A

15. LEGAL CONSIDERATIONS

- 15.1 The proposed services appear to fall within the 'light touch regime' of the Public Contracts Regulations 2015. The relevant threshold for a full public competition under those Regulations is £663,540. Accordingly, the procurement requirements for this contract sit entirely within the Contract Procedure Rules of the Council.
- 15.2 The competition requirements in the Contract Procedure Rules are set out in Rule 8.2.1. Given the value of the proposed contract is over £100,000 but under the relevant PCR threshold, the normal requirement is an invitation to tender process making use of public advertisement.
- 15.3 Section 13 of the Contract Procedure Rules covers decisions to award a contract to a single operator. Where the contract value is between £100,000 and £1,000,000, the authorisation of the Chief Officer is required in agreement with the Director of Corporate Services, Assistant Director Governance and Contracts and Director of Finance and following approval of the relevant Portfolio Holder.
- 15.4 If a direct award would be justifiable under the Public Contracts Regulations 2015 if the contract were above the relevant PCR threshold, then it is likely to be also justifiable if the same contract were below that threshold, as is the case here.
- 15.5 Regulation 32(2)(a) of the PCRs allows a direct award where 'no tenders... have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission where it so requests'.
- 15.6 This report indicates a fairly recent procurement procedure in which no tenders were received. Assuming the conditions of contract applicable to this direct award are not substantially different to those in the earlier procurement procedure, then this direct award appears justifiable. Given this contract is below the threshold, a report to the Commission is not necessary.
- 15.7 In the circumstances (the lack of interest in a recent procurement exercise, and the relatively low value of this contract), the risk of challenge to a decision to make this direct award would appear very low.
- 15.8 It is assumed that the contract offered in this direct award will be substantially similar to those published in the October 2021 procurement. Accordingly, it is assumed no new set of terms and conditions is required.

Non-Applicable Sections:	[List non-applicable sections here]
Background Documents: (Access via Contact Officer)	[Title of document and date]