



**Report of:** Head of Property Management

**Report to:** Director of Resources & Housing

**Date:** 4<sup>th</sup> August 2020

**Subject:** Approval to waive Contract Procedure Rules 9.1 & 9.2 and implementation in relation to Disrepair additional capacity.

Are specific electoral wards affected?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes, name(s) of ward(s): Wetherby, Harewood, Alwoodley, Moortown, Roundhay, Chapel Allerton, Killingbeck & Seacroft, Gipton & Harehills, Burmantofts & Richmond Hill, Temple Newsam.	
Has consultation been carried out?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will the decision be open for call-in?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If relevant, access to information procedure rule number: Appendix number:	

## Summary

### 1. Main issues

- Disrepair services are currently delivered by Mears in the South and West of the City under the Responsive Repairs, Voids & Cyclical Maintenance contracts, these are in place until 31<sup>st</sup> March 2021. In the East of the city, Engie Regeneration Ltd provides similar services but their contract is due to expire on the 14<sup>th</sup> October 2020 with no further extensions available.
- Work is close to completion on the development and agreement of a procurement strategy to deliver disrepair provisions city wide and as a totally separate contract to Responsive Repairs, Voids & Cyclical Maintenance contracts. This will seek to align disrepair provisions on a city wide basis and will require a detailed procurement exercise for the whole city and this will be subject to a separate procurement strategy report as a key decision.
- However, considering the above proposal, in addition to the impact of Covid19, it will not be possible to have newly procured arrangements in place before April 2021. A market sounding exercise was undertaken to test the impact of Covid19 on the market and the results from the analysis supports this proposal.

Therefore, approval is being sought to waive Contract Procedure Rules (CPRs) 9.1 and 9.2 and enter into a direct contract with Engie Regeneration Ltd, the current provider of Disrepair services in the East, without seeking competition for the period 15<sup>th</sup> October 2020 to 30<sup>th</sup> September 2021. There will be an estimated spend of £2.4m during this period. This will allow works to continue in the East of the City whilst the new procurement exercise is undertaken.

- It is proposed that the variation to this contract will be based upon the same specification, terms and conditions, and pricing as the current contract with Engie Regeneration Ltd.

## **2. Best Council Plan Implications**

- These Disrepair services support Leeds City Council's (LCC) ambition for Leeds to be a compassionate and caring city that tackles poverty and reduces inequality. Through the provision of these services we ensure that council tenants (including some of the most vulnerable people in our city) are able to enjoy living in safe, accessible and well maintained homes.
- The services will contribute to the 'Best Council Plan 2018/19 – 2020/2021 – tackling poverty and reducing inequalities'.
- With regard to housing it will contribute to having 'Housing of the right quality, type, tenure and affordability in the right places'.

## **3. Resource Implications**

- There are no resource implications as the additional works will be based on the same schedule of rates and terms and conditions as the existing contract therefore it still represents value for money.
- This will allow the Disrepair Team an opportunity to re-procure a new city wide Disrepair provision which will be the subject of a separate procurement strategy report. This strategy will have a comprehensive long term city wide approach.

## **Recommendations**

- The Director of Resources & Housing is requested to waive Contract Procedure Rules 9.1 and 9.2 to permit the Council to enter into a direct contract with Engie Regeneration Ltd for the period 15<sup>th</sup> October 2020 to 30<sup>th</sup> September 2021 to deliver disrepair works in the East of the City. The estimated contract expenditure is up to £2,400,000.00.

## **1. Purpose of Report**

- 1.1 To seek approval from the Director of Resources & Housing to waive CPRs 9.1 and 9.2 to enter into a new contract starting 15<sup>th</sup> October 2020 to 30<sup>th</sup> September 2021 with Engie Regeneration Ltd for the provision of disrepair work in the East area of the City with an estimated contract value of £2,400,000.00

## **2. Background Information**

- 2.1 The Council has a statutory duty under Section 11 of the Landlord and Tenant Act 1985 to ensure homes are maintained to a certain standard and as such it needs a service to repair and maintain its homes which have fallen into disrepair.
- 2.2 The Homes (Fitness for Human Habitation) Act 2018 (the Act) came into force on 20<sup>th</sup> March 2019 and has a direct effect on disrepair. This new legislation is intended to ensure that all rented accommodation is fit for human habitation and to strengthen tenants' rights against landlords who do not fulfil their legal obligations to keep their properties safe. There is more onus on the landlord to know the condition of its assets rather than relying on tenants to report repairs. From 20<sup>th</sup> March 2020, the Act applies to all periodic tenancies (which is all tenancies that started before 20<sup>th</sup> March 2019) and subsequent tenancies and it is anticipated that nationally this will lead to an increase in the number of disrepair claims received from 20<sup>th</sup> March 2020 onwards.
- 2.3 Leeds City Council handles a high volume of repairs, in order to reduce risk and to improve outcomes for tenants it was determined that additional capacity should be sought to undertake works associated with disrepair claims and as such the current contract was awarded to Engie Regeneration Ltd in October 2018 to support the repair and maintenance of homes which have fallen into disrepair in the East of the city.
- 2.4 The contractors' performance has been managed by the disrepair team and beneficial working relationships are in place which support the ability to deliver at an increased capacity as the new legislation implemented is likely to increase disrepair claims.
- 2.5 The Council will undertake an OJEU procurement process for the new city wide disrepair service contract as the contract is anticipated to be above the EU procurement threshold for capital works. However, there is not sufficient time to complete an OJEU procurement before the current contract expires, therefore, Leeds City Council need to enter into a contract extension with Engie Regeneration Ltd to ensure service continuity whilst a new procurement exercise is carried out.

## **3. Main issues**

- 3.1 The current agreements to deliver Disrepair services in the South & West of the city fall under the larger Responsive Repairs, Voids & Cyclical Maintenance (RRV&CM) contracts which are due to expire on the 31<sup>st</sup> March 2021. Negotiations have commenced with the current RRV&CM contract holders (and Disrepair service providers) to ensure Disrepair services continue to be provided in the South & West of the city prior to the mobilisation of the city wide contracts on 1<sup>st</sup> October 2021. The citywide procurement strategy will procure a single provider for the West and South of the city and a separate provider for the East of the city.

- 3.2 It is proposed to procure disrepair works as a separate standalone contract in the long term in order to be able to provide a specific dedicated team and workforce to deal with all aspects of disrepair and this is beneficial to the Council as opposed to being a “bolt on” to Responsive Repairs, Voids & Cyclical Maintenance services.
- 3.3 It is necessary to establish a new contract with Engie Regeneration Ltd for 12 months to allow sufficient time for the procurement of city wide services. Should a short term contract not be entered into, there would be no provision to carry out Disrepair works in the East of the city as of 15<sup>th</sup> October 2020. This would result in Council spending off contract, leading to potential procurement challenges, as the Council would have to carry out the repairs regardless of whether this contract was varied or not.

#### **4. Corporate considerations**

##### **4.1 Consultation and engagement**

- 4.1.1 After consultation with the Head of Property Management, Disrepair Team, Housing Leeds Procurement team and Procurement & Commercial Services, it is proposed to establish an interim contract with Engie Regeneration for the East of the city upon expiration of the existing contract.
- 4.1.2 In May 2020 a market sounding exercise was undertaken with prospective bidders to assess the impact of Covid19 on the market. This demonstrated a low interest in potential contracts as few contractors responded and the outcome illustrates that most contractors are working with limited capacity. The feedback from the market sounding exercise has been reflected in the proposed strategy where possible.

##### **4.2 Equality and diversity / cohesion and integration (ECDI)**

- 4.2.1 The terms and conditions of the original contract will not be amended during the extended contract period, so the original ECDI is still valid.

##### **4.3 Council policies and the Best Council Plan**

- 4.3.1 This procurement will ensure the Council contributes to the delivery of the following policies and priorities:

###### **Working with communities;**

- Safer and Stronger Communities
- Best city for communities;
- Improving housing quality
- Improving health through housing
- City wide initiatives such as the Leeds Housing Strategy 2016 -2021 and the Leeds Rental Standard.

###### Climate Emergency

- 4.3.2 The Council declared a Climate Emergency for the City on 27<sup>th</sup> March 2019 and one element is to reduce carbon emissions. How this could be achieved is by scheduling the planned works requirements so that repairs to houses take place nearby each other which help to reduce multiple journeys to deliver materials

around the City, thus reducing carbon emissions. Energy efficient materials will be used in these repairs to lower carbon emissions.

- 4.3.3 As Disrepair claims are addressed, older and more energy inefficient materials will be replaced with more up-to-date versions. This will not only improve the condition of the housing stock in question, but in many instances improve its energy and thermal efficiency.

#### **4.4 Resources, procurement and value for money**

- 4.4.1 The works to be delivered by Engie Regeneration Ltd are funded by a combination of capital & revenue funding. No funding injection into the capital programme will be required.
- 4.4.2 The provision of disrepair services by Engie Regeneration Ltd, and the need for seeking approval to waive CPRs, is just one element of an overall strategy to maintain the Council's housing stock. The requirement to establish a new contract will enable contract alignment, and dovetail with a number of open procurements. These procurements include a city wide Disrepair provision and Responsive Repairs, Voids & Cyclical Maintenance coverage for the West of the city.

#### **4.5 Legal implications, access to information, and call-in**

- 4.5.1 The value of this interim contract is worth up to £2,400,000 for 12 months and therefore is a Key Decision which will be subject to call-in. There are no grounds for keeping the contents of this report confidential under the Access to Information Rules.
- 4.5.2 The value of the contract detailed in this report is below the threshold for the application of Public Contracts Regulations 2015 for the procurement of public contracts and therefore is not subject to the full EU procurement rules.
- 4.5.3 In awarding the contract direct to Engie Regeneration Ltd without competition, there is a potential risk of challenge from other providers, to whom this contract could be of interest, that the Council has not been wholly transparent. In terms of transparency it should be noted that case law suggests that the Council should always consider whether contracts of this value could be of interest to contractors in other EU member states, and if it could, the opportunity should be subject to a degree of European wide advertising. It is up to the Council to decide what degree of advertising is appropriate. In particular, consideration should be given to the subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices, etc.) and the geographical location of the place of performance. The decision maker has considered this and is of the view that the contract would not be of interest to providers in other EU member states.
- 4.5.4 There is a risk of an ombudsman investigation arising from a complaint that the Council has not followed reasonable procedures, resulting in a loss of opportunity. The complainant would have to establish maladministration. It is not considered that such an investigation would necessarily result in a finding of maladministration; however such investigations are by their nature more subjective than legal proceedings.

4.5.5 Although there is no legal obstacle preventing the implementation of this waiver, the above comments should be noted. In making their final decision, the Director of Resources and Housing should be satisfied that the course of action chosen represents best value for the Council.

## **4.6 Risk management**

4.6.1 Should a new contract not be approved it would leave a significant part of the city without a contractor to undertake disrepair work. This will leave the Council vulnerable to a claim under section 11 of the Landlord and Tenant Act 1985 as well as prosecution under the Homes (Fitness for Human Habitation Act) 2018. However, if the Council decide to undertake disrepair works without a contract in place, this would result in the authority spending off contract.

## **5. Conclusions**

5.1 There is still a need for Housing Leeds to have a contract to continue with the disrepair work in the East of the City while Housing Leeds put a new citywide contract in place with the view to start on 1<sup>st</sup> October 2021.

5.2 The risk of procurement challenge from interested parties due to the approval of this waiver is thought to be low and this is mitigated by the proposal to go out to competition for a city wide Disrepair service. However, new legislation is increasing the likelihood of increased numbers of Disrepair claims. Capacity to address these is essential to avoid further legal proceedings.

5.3 The interim contract will be established upon the terms, conditions and specifications as to those which are currently in place.

## **6. Recommendations**

- The Director of Resources & Housing is requested to waive Contract Procedure Rules 9.1 and 9.2 to permit the Council to enter into a direct contract with Engie Regeneration Ltd for the period 15<sup>th</sup> October 2020 to 30<sup>th</sup> September 2021 to deliver disrepair works in the East of the City. The estimated contract expenditure is up to £2,400,000.00.

## **7. Background documents<sup>1</sup>**

Supporting documentation was developed for the original procurement of this contract, and they are still valid for this variation.

---

<sup>1</sup> The background documents listed in this section are available to download from the council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.