

AGENDA ITEM: 8

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| Meeting | Cabinet Resources Committee |
| Date | 16 January 2012 |
| Subject | Waiver of Contract Procedure Rules for the provision of Emergency Temporary Accommodation |
| Report of | Cabinet Member for Housing |
| Summary | This report seeks waiver of Contract Procedure Rules to enable the regularisation of existing appointments and the future appointments of landlords for the provision of Emergency Temporary Accommodation, , an EU Regulation Part B Service, pending incorporation of Procedure for Appointment of Landlords into the Procurement Code of Practice which is pending review and completion Spring 2012. |

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| Officer Contributors | Nick Lowther, Homelessness Reduction Co-ordinator |
| Status (public or exempt) | Public |
| Wards affected | All |
| Enclosures | Appendix A [Emergency Temporary Accommodation Providers] |
| For decision by | Cabinet Resources Committee |
| Function of | Executive |
| Reason for urgency / exemption from call-in | Not applicable |
| Contact for further information: Nick Lowther, Homelessness Reduction Co-ordinator, 020 8359 6002 | |

1. RECOMMENDATION

- 1.1 That the Committee waive Contract Procedure Rules as identified in section 8 (below) of the report in order to enable the regularisation of existing appointments of landlords (as identified in the, attached, Appendix) and the future appointments of landlords for the provision of Emergency Temporary Accommodation, an EU Regulation Part B Service, pending incorporation of a Procedure for Appointment of Landlords into the Procurement Code of Practice which is pending review and completion Spring 2012.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Audit Committee at its meetings on 16th June 2011 and 6th September 2011 reviewed and agreed the Procurement Controls and Monitoring Plan produced following the comprehensive review of the Council's contract monitoring arrangements.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The Council's Corporate Plan 2011-2013 under the corporate priority 'Sharing Opportunities and Sharing Responsibilities' has a top performance target that short-term nightly purchased temporary accommodation is kept below 250 units and that there are fewer than 300 homelessness acceptances in 2011/12.
- 3.2 The regularisation of contracts and the efficient handling of emergency temporary accommodation placements will contribute to the council's key priority of 'Better services with less money' through efficient procurement and contract management.

4. RISK MANAGEMENT ISSUES

- 4.1 There is a significant reputational risk associated with failure to regularise existing contractual arrangements within the timescale presented to the Audit Committee. Waivers to the Contract Procedure Rules (CPRs) are being sought to secure authority to expedite regularisation and therefore mitigate this risk.
- 4.2 There is a risk that where the value of a contract exceeds EU thresholds, that a challenge could be made against the council. However these services are largely Part B services (of little cross-border interest) and as they are reactively, rather than proactively sourced, this risk is considered to be low.
- 4.3 If the waiver is not granted, there is a significant risk that the Housing service will be unable to meet the needs of service users in accordance with the council's statutory obligations.
- 4.4 Despite the absence of formal compliant contracts, procedures are in place to ensure the safeguarding of homeless households and also to protect the council's interests (see 9.4).

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 Pursuant to the Equalities Act 2010, public sector organisations have a responsibility to consider equality as part of every procurement process.

5.2 The council is also under obligation to have due regard to eliminating unlawful discrimination, advancing equality and fostering good relations in the context of age, disability, gender reassignment, pregnancy, and maternity, religion or belief and sexual orientation.

5.3 The council's Equalities Policy will also form part of the formal evaluation of all future providers' proposals. Any contracts established will include explicit requirements fully covering the council's duties under equalities legislation.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

6.1 As at 30th November 2011 there were 259 units of emergency temporary accommodation provided by a total of 22 managing agents. The housing service is taking action to reduce the numbers in emergency accommodation in line with corporate targets.

6.2 At the end of the 2nd quarter of 2011/12, the council was forecasting a spend of £2.41m in 2011/12 on securing emergency accommodation through a number of different agents and providers. In the same period it is expected that the council will collect £2.47m in rental income from these units.

7. LEGAL ISSUES

7.1 The council's legal duties, with respect to housing homeless persons are set out in paragraph 9 below.

7.2 Services which fall within Part B of Schedule 3 to The Public Contracts Regulations 2006 (as amended) are not subject to the full EU procurement regime but must meet the Treaty principles of transparency, fairness and non discrimination. Subjecting the, relevant, service(s) to a limited amount of advertising – e.g. on the council's website – and enabling interested parties to be considered in the process is, generally, deemed to be sufficient to meet these requirements. It is considered that the provision of emergency temporary accommodation is unlikely to generate cross-border interest.

8. CONSTITUTIONAL POWERS

8.1 The Council's Constitution in Part 3, Responsibility for Functions, paragraph 3.6 states the terms of reference of Cabinet Resources Committee including agreeing an exception to the Contract Procedure Rules.

8.2 Rule 5.8 of the Contract Procedure Rules authorises a Cabinet Committee to waive the requirements of the CPRs if satisfied, after considering a written report by the appropriate officer, that the waiver is justified because:

8.2.1 - the nature of the market for works to be carried out or the supplies or services to be provided has been investigated and demonstrated to be such that a departure from the requirements of the Contract Procedure Rules is justifiable; or

8.2.2 - the contract is for works, supplies or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or

8.2.3 - the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or English Law); or

8.2.4 - there are other circumstances which are genuinely exceptional

- 8.3 This report seeks waivers on the basis of 8.2.1 and 8.2.4. These waivers are sought to provide compliance with the recommendations of the Audit Committee Procurement Controls and Monitoring Plan. Compliance for Housing Service Part B Service delivery cannot be achieved without this waiver.
- 8.4 Waiver of Contract Procedure Rules
- 8.4.1 Contract Procedure Rule 5 and Table 5-1 set out the council's 'Authorisation' and 'Acceptance' Principles. Waiver of this Rule is sought, herein for the purposes identified within this report.
- 8.4.2 Contract Procedure Rule 6.4 to 6.6 and Table 6-1 set out the council's tender procedure requirements. Waiver of this Rule is sought, herein for the purposes identified within this report.
- 8.4.3 Contract Procedure Rule 6.9 to 6.15 set out requirements in relation to Framework Agreement, Approved Lists of External providers, Single Source Suppliers, Gateway Review Process and Financial Restrictions on Selection of Procedures.
- 8.4.4 Contract Procedure Rule 10.2 requires every contract to have, specified, written terms and conditions. The, relevant, management frameworks are as agreed with the two, other, local authorities who are parties to the arrangement with the, relevant, landlords.
- 8.4.5 Contract Procedure Rule 10.3.7 requires a sufficient surety (e.g. bond) to be taken where the contract is to be performed in stages or over a period of time and the cost of the contract is over £300,000, unless the Director/Head of Service, the Chief Finance Officer and the [Assistant Director – Legal] direct otherwise following the completion of a risk assessment. It is considered that the cost of, at least, one of the management frameworks with a landlord may exceed the £300,000 threshold. However, as emergency accommodation is spot purchased and occupied for short lengths of time, it is considered that a bond is not required and that the absence of a bond will not adversely impact upon the council's position in the arrangements.
- 8.4.6 Contract Procedure Rule 10.6 requires a contract to be sealed where its value exceeds £156,422, unless the Assistant Director – Legal directs otherwise. The management frameworks with, existing, landlords have been signed. It is not considered that the council's position will be disadvantaged given the short term nature of temporary accommodation arrangements. Any future management frameworks which are entered into prior to incorporation of a procedure for appointment of landlords into the Procurement Code of Practice will be dealt with in accordance with the Contract Procedure Rules and the Scheme of Delegation of the, relevant, service.
- 8.4.7 Contract Procedure Rule 10.7 provides that contracts not made under seal can be signed by the relevant Director/Head of Service, Chief Executive, Director of Corporate Governance, Assistance Director – Legal or any officer authorised by them. The existing management frameworks have been signed by the temporary accommodation Team Manager. Waiver of this Rule is sought in relation to these, existing, management frameworks. Any, further, temporary accommodation management frameworks which are entered into prior to incorporation of a procedure for appointment of landlords into the Procurement Code of Practice which is pending review and completion in Spring 2012,

will be dealt with in accordance with the Contract Procedure Rules and the Scheme of Delegation of the, relevant, service.

- 8.4.8 The waiver of the rules is required to authorise the council to regularise existing appointments and to make future appointments of landlords to provide emergency temporary accommodation, until such time as amendments to the Contract Procedure Rules are made to take account of the, particular, nature of emergency temporary accommodation.

9. BACKGROUND INFORMATION

- 9.1 Councils have a duty under the Housing Act 1996 (as amended by the Homelessness Act 2002) to assist those approaching them for housing advice and to secure accommodation for people who the Council believes to be homeless, eligible for assistance and in priority need. To meet this need, the council utilises emergency accommodation that is paid for on a nightly basis.
- 9.2 Currently, the Council works with a number of managing agents who have the capacity to provide approximately 260 units of accommodation to the Council. The accommodation is offered on licence to the Council and homeless applicants occupying the properties are granted licence agreements by the Council.
- 9.3 Since August 2011, the council has been involved in a joint procurement agreement with the London Boroughs of Haringey, Enfield and Camden. This has served both to agree set standards for accommodation and a favourable pricing agreement for the boroughs, reducing the costs of temporary accommodation. This agreement has recently been expanded to include the London Borough of Islington.
- 9.4 The Housing service adopts a verification process, similar to that of a formal tender process, for all agents providing emergency temporary accommodation. The process includes verifying proof of identity, company accounts, evidence of staff procedures including CRB checks, certificates of insurance and a signed management agreement between the provider and the council amongst others.
- 9.5 The comprehensive review of the Council's contract monitoring arrangements highlighted that contracts had been established for emergency temporary accommodation landlords but procurement visibility of appointment procedure was queried in relation to a robust audit trail.
- 9.6 Corporate Procurement Team have supported the Housing Service to develop a procedure for appointment of emergency temporary accommodation landlords. The draft procedure for appointment has been prepared by Housing Service and has been reviewed as acceptable by procurement. The draft document has been forwarded to Legal Services for their review.
- 9.7 The draft procedure for appointment of emergency temporary accommodation landlords, once concurred, will be incorporated into the Corporate Procurement Team's annual review of Contract Procedure Rules and form part of the update to the Procurement Code of Practice. The annual review will commence in January 2012 with conclusion envisaged for the end of the current financial period.
- 9.8 The adoption of the procedure for appointment of emergency temporary accommodation landlords within the Procurement Code of Practice will provide support to future audit

review and provide consistency with regard to the appointment of landlords. This service provision is subject to EU Regulations Part B Services which require good practice to be undertaken.

- 9.9 The waiver of contract procedure rules has been identified as appropriate to cover the intervening period between the comprehensive review of the Council's contract monitoring arrangements and incorporation of the procedure for appointment of emergency temporary accommodation landlords within the Procurement Code of Practice.

10. LIST OF BACKGROUND PAPERS

- 10.1 None

Legal –
CFO –

Appendix A - Emergency Temporary Accommodation Providers

| Provider |
|-----------------------------------|
| A&G Gardner |
| Alasia Accommodation |
| Andrew James Lettings Ltd |
| Apex Housing Solutions |
| Asset Grove Ltd |
| Atlantic Lodge |
| Crestpoly Estates & First Housing |
| Euro Stars Lettings Ltd |
| Jane Thorne Housing |
| Kimblecrete Ltd |
| Limelight Properties |
| Manor Hostels Ltd |
| L C Mitsiou & Son Ltd |
| Moss Hall Hotel |
| Oakforest Properties Ltd |
| Omega Lettings Ltd |
| Seemore Lettings Ltd |
| Stagecoach Lettings Ltd |
| Stone Lodge Hotels |
| The Property Company |
| Tower Estates (Lodge) Ltd |
| Varosi Estates |
| West Lodge Ltd |
| Woodhouse Estates |