

DELEGATED POWERS REPORT NO.

2049

SUBJECT: AUTHORISATION OF ENTRY INTO A CONTRACT WITH DEFIANT ENTERPRISES LTD FOR RESIDENTIAL CARE SERVICES FOR AN ADULT CLIENT

Control sheet

All of the following actions MUST be completed at each stage of the process and the signed and dated report MUST be passed to Corporate Governance for publishing

1. Governance Service receive draft report	Name of GSO Date	Anita Vukomanovic 22/5/13
2. Governance Service cleared draft report as being constitutionally appropriate	Name of GSO Date	Anita Vukomanovic 23/5/13
3. Finance clearance obtained (<i>report author to complete</i>)	Name of Finance officer Date	Michael Millar 28.5.2013
4. Staff and other resources issues clearance obtained (<i>report author to complete</i>)	Name of Resource officer Date	n/a
5. Strategic Procurement clearance obtained (<i>report author to complete</i>)	Name of SPO. Date	Kevin Bates 3.6.2013
6. Legal clearance obtained from (<i>report author to complete</i>)	Name of Legal officer Date	Lanna Childs / Sheila Saunders 29.5.2013 / 4,6.2013
7. Policy & Partnerships clearance obtained (<i>report author to complete</i>)	Name of P&P officer Date	Andrew Nathan 22.5.2013
8. Equalities & Diversity clearance obtained (<i>report author to complete</i>)	Name of officer Date	Andrew Nathan 22.5.2013
9. The above process has been checked and verified by Director, Head of Service or Deputy	Name Date	David Jones 4.6.2013
10. Signed & dated report, <u>scanned or hard copy</u> received by Governance Services for publishing	Name of GSO Date	Anita Vukomanovic 5.6.13
11. Report published by Governance Services to website	Name of GSO Date	Anita Vukomanovic 13.6.13
12. Head of Service informed report is published.	Name of GSO Date	Anita Vukomanovic 13.6.13
Key decisions only:		
13. Expiry of call-in period	Date	
14. Report circulated for call-in purposes to Business Management OSC members & copied to Cabinet Members & Head of Service	Name of GSO	
	Date	

ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER (EXECUTIVE FUNCTION)

Subject	Authorisation of Entry into a Contract with Defiant Enterprises Ltd for Residential Care Services For an Adult Client
Officer taking decision	David Jones, Interim Assistant Director, Adults and Communities Delivery Unit
Date of decision	3 June 2013
Date decision comes into effect	3 June 2013

Summary	This report recommends entry into a contract for the provision of residential care for an adult client, requiring a waiver of the requirement of the Contract Procedure Rules for a competitive process to be undertaken
---------	--

Officer Contributors	James Taylor, Deputy Head of Commissioning and Supply Management, Adults and Communities Delivery Unit
Status (public or exempt)	Public
Wards affected	All
Enclosures	Appendix 1
Reason for exemption from call-in (if appropriate)	
Key decision	No

Contact for further information: James Taylor james.taylor@barnet.gov.uk 020 8359 4886

Serial No. 2049

1. RELEVANT PREVIOUS DECISIONS

1.1 None

2. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

2.1 This report concerns the approval of a contract for the provision of social care services for a single individual. The recommended decision is intended to ensure compliance with the Council's Contract Procedure Rules and therefore supports the Corporate Plan commitment to the Council's business being well-run, efficient and transparent.

3. RISK MANAGEMENT ISSUES

3.1 There is a high risk that the Council will be in breach of its statutory social services duties if it fails to proceed with the recommended contract. The assessment of the client's needs indicates a substantial or critical need for provision of the recommended service. Failure to make suitable and timely provision is highly likely to result in serious harm to the individual and to the Council's reputation. A breach of the Council's obligations may also lead to litigation and to financial costs irrespective of the outcome of any proceedings.

3.2 *Time-Criticality*

There is a high risk that it will not be possible to complete the arrangements for the service user to receive the care and support required if a competitive procurement exercise is undertaken as required by the Contract Procedure Rules in view of the likely timescale for this work. This report proposes to mitigate the risk by taking a decision to waive the requirement for competitive selection.

3.3 *Client Choice*

There is a high risk that the Council will not be able to comply with the Department of Health's guidance to local authorities (LAC(2004)20 Guidance on National Assistance Act 1948 (Choice of Accommodation) Directions 1992) if it seeks to select a contractor through a competitive procurement. The Guidance states that if an individual expresses a preference for particular accommodation, the council must arrange for care in that accommodation subject to certain specified conditions. The Directions and Guidance though archived have not been specifically superseded or repealed. The client concerned has expressed such a preference and all the conditions for the Council to comply with the preference are satisfied. This report proposes to mitigate the risk by taking a decision to waive the requirement for competitive selection.

3.4 *Older Adult Residential Placement*

There is a risk that the Council will not achieve value for money if it fails to undertake a competitive procurement exercise. However, the client concerned is an older adult whose placement is subject to the terms of the Council's pricing strategy

for residential and nursing care placements. The client's preferred provider has indicated willingness to proceed with the placement at the Council's agreed standard. This report proposes to mitigate the risk by taking a decision to waive the requirement for competitive selection.

4. EQUALITIES AND DIVERSITY ISSUES

- 4.1 The Equality Act 2010 places a duty on public authorities to have due regard to eliminating unlawful discrimination, advancing equality and fostering good relations in the contexts of age, disability, gender reassignment, pregnancy and maternity, religion or belief and sexual orientation.
- 4.2 The recommended contracts require providers to have a high standard of equitable behaviours. This includes compliance with Equal Opportunities Legislation, operating an equal opportunities policy, observing Codes of Practice issued by the Commission for Equality and Human Rights, and giving appropriate consideration to each customer's race, nationality, cultural or ethnic background, marital status, age, gender, religion, sexual orientation and disabilities.

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

- 5.1 This report concerns a contract for the placement of an individual at a weekly and annual cost of £500.48 and £26,096 respectively. There is sufficient provision within the Adults and Communities current and forward base budget to meet this cost.
- 5.2 There are no IT, property or sustainability issues.

6. LEGAL ISSUES

- 6.1 Procurement processes must comply with the European procurement rules and the Treaty obligations of transparency, equality of treatment and non discrimination as well as the Council's Contract Procedure Rules.
- 6.2 The proposed contract is for provision of a Part B service for the purposes of the Public (Contracts) Regulations 2006 (as amended) and there is therefore no requirement to use tender procedures in the selection of contractors. although there are some requirements with which the Council must comply in placing a 'Part B' contract.
- 6.3 The proposed contract will be in the standard form approved by the Council's Legal Services for the purchase of residential care services for older people and will be of three years duration with an option to extend for a further year.

7. CONSTITUTIONAL POWERS

- 7.1 Council's Constitution, Part 3, Responsibility for Functions - Section 6, Powers Delegated to Officers, provides that Chief Officers (i.e. the Chief Executive, Directors and Heads of Service as listed in Article 12) can take decisions, in consultation with the Cabinet Member concerned (or without consultation where it is a decision authorised to be taken by the Chief Officer under the Contract Procedure

Rules or it involves the implementation of policy or earlier decision of the Council or Cabinet or Committee or it is in respect of operational matters within the Chief Officer's sphere of managerial or professional responsibility and is not significant in terms of budget or policy): to authorise and accept quotations for contracts to the limits placed on Chief Officers by Contract Procedure Rules for approved schemes with sufficient estimate provision.

7.2 Council Constitution, Contract Procedure Rules – Appendix 1 Table A – sets out authorisation and acceptance thresholds and procurement methods for Contracts.

7.3 Council Constitution, Contract Procedure Rules Paragraph 15.1 – 15.4 state that:

15.1 In the event that the application of these rules prevents or inhibits the delivery or continuity of service, Directors or Assistant Directors and Lead Commissioners may apply for a waiver. All applications for a waiver of these Contract Procedure Rules must be submitted to Cabinet Resources Committee specifically identifying the reason for which a waiver is sought, including justification and risk.

15.2 Directors, Assistant Directors and Lead Commissioners may take decisions on emergency matters as set out in the Leader's Scheme of Delegation providing they report to the next available Cabinet Resources Committee, setting out the reasons for the emergency waiver. A copy of the relevant Cabinet Resources Committee report must be provided to Central Procurement and stored on the Councils contract repository.

15.3 Inadequate planning and organisation of resources does not constitute an acceptable justification for a waiver.

15.4 Any waiver can only be granted for a maximum period of 12 months and will count as a variation.

7.4 An emergency waiver of the requirement of the Contract Procedure Rules for competitive quotations is required in order to mitigate the risks summarised in Section 3 above.

8. BACKGROUND INFORMATION

8.1 This report seeks approval to waive the requirement for a competitive procurement and to enter directly into a contract with Defiant Enterprises Ltd for the urgent placement of KG, an adult aged 96 who is an older person with sensory impairment.

8.2 The request for service provision was received by the Quality and Purchasing Team on 03/05/13 from the Short Term Enablement & Planning Team. The client is identified as having a substantial or critical need for residential care and is awaiting discharge from hospital. In officers' opinion the need cannot be met appropriately through provision under a pre-existing contract for the reasons set out below.

Reason for Proposed Provision

8.3 The client requires care and support in Norfolk in order to live near to relatives but

the Council has no pre-existing contract for suitable services in the district concerned.

Client Preference

8.4 The client has expressed a preference for placement in the service provided by the proposed contractor, and the Council is satisfied that the proposed placement would meet all of the following conditions specified in the Department of Health's guidance to local authorities (LAC(2004)20 Guidance on National Assistance Act1948 (Choice of Accommodation) Directions 1992)

- the accommodation is suitable in relation to the individual's assessed needs
- to do so would not cost the Council more than what it would usually expect to pay for accommodation for someone with the individual's assessed needs
- the accommodation is available
- the provider of the accommodation is willing to provide accommodation subject to the Council's usual terms and conditions

Suitability of Contractor

8.5 The Quality & Purchasing Team has completed all necessary due diligence checks in accordance with departmental procedure and is satisfied that the proposed contractor is a fit and suitable organisation.

Suitability of Price

8.6 The proposed contractor has indicated acceptance of the standard price approved by the Council for the provision of residential and nursing care services for older adults

Contract Value

8.7 The proposed contract is for a term of three years with an option to extend for one further year. The contract value for the purposes of the Contract Procedure rules is accordingly £104,386

Time Criticality

8.8 The relevant social work team manager has confirmed that the placement is required ASAP since the client is overdue for discharge from hospital.

8.9 In officers' opinion, the time-criticality and other circumstances summarised above are not consistent with the conduct of a competitive procurement exercise as required under the Contract Procedure Rules

9. LIST OF BACKGROUND PAPERS

9.1 None.

10. OFFICER'S DECISION

I authorise the following action:

- 10.1 Emergency waiver of the requirement for a competitive procurement process in respect of the proposed contract
- 10.2 That the council enters into a contract with Defiant Enterprises Ltd, for three (3) years, with an option to extend for a further year, for the provision of Residential Care Services to an adult client

Signed

David Jones
Interim Assistant Director, Adults and Communities
Delivery Unit

Date

3 June 2013