

Social & Community Services Directorate

Request for exemption from tendering under Contract Procedure Rule (“CPR”) 4 in respect of the award of a contract providing residential care services for people with a learning disability

Legal Appraisal by County Solicitor

A. Background

1. The Social & Community Services Directorate (“S&CS”) is seeking exemption under CPR 4 from the tendering requirements under CPRs 12-18 in relation to the award of a contract (“the Contract”) for the provision of three residential care services for fourteen people with a learning disability as set out in the exemption report to which this Legal Appraisal is annexed.
2. Details of the proposed Contract are:
Service Provider: The Camden Society (“TCS”)
Commencement date: 1st March 2015
Duration: One year with an option to extend for a further year
Value including extension: £1,638,340
3. Similar care services are currently provided by TCS under a two year contract which was originally advertised and tendered. This contract ends 28th February 2015 with a value of £1,598,340.

B. Grounds for Exemption

1. The original intention under the current two year contract was to re-model the residential service into a supported living service. Unfortunately it has not been possible to obtain the co-operation of the current housing provider to allow this to happen. The re-modelling has therefore not happened and service users are still receiving services under the residential care model. There is now insufficient time for the transition from residential care to supported living to take place before the end of the contract.
2. It is intended to procure a supported living service in two years’ time. Any alternative interim solution with a different service provider would mean a change in the identity of the current service provider in March 2015 and again in March 2017. There would also be uncertainties around the provision of housing which would need to accommodate a change to the service model. Changes of service provider and housing would be disruptive to service users where good stable relationships have formed between service users and the current provider.
3. To minimise disruption to service users as they make the change from residential care to supported living requires a transitional period involving the integration of the residential and supported living elements so that at the end of the two year period all service users have moved to a supported living model. This is dependent on suitable housing and a housing provider capable

of providing it. TCS has identified secured partner organisations capable of providing suitable accommodation to enable the transition to take place.

4. A period of up to two years may be required to allow TCS and its partner housing organisations time to consult service users and families, to secure and adapt the new accommodation and to implement the supported living service as was intended under the current contract.
5. No other service provider is likely to be able to provide this specific service which takes into account the housing complexities but which minimises disruption to service users for the two year transitional period required.

A competitive procurement process will be followed and a new provider selected to deliver services from 1st March 2017.

C. Appraisal

1. In making its contract arrangements, the Council is required to demonstrate that it has acted in accordance with the EU Treaty-based principles of fairness, transparency, non-discrimination and proportionality (“the EU Principles”). Aside from the application of the Council’s own Contract Procedure Rules, public bodies are also required to comply with the Public Contracts Regulations 2006 (“the Regulations”), which impose further procedural requirements in relation to contracts for services over a prescribed pecuniary threshold.
2. Both the Contract Procedure Rules and the Regulations are drafted with the EU Principles in mind. The Regulations impose two levels of procedural requirement, depending on the nature of services being procured. The extensions sought fall under the much less rigorous Part B regime imposed by the Regulations and are therefore subject to limited procedural requirements.
3. The County Solicitor accepts the following arguments put forward by S&CS:
 - (i) the unforeseen delays with remodelling the current service caused by a lack of co-operation from the current housing provider;
 - (ii) the disruptive effects on the service users of a procurement and selection of an alternative service provider (and possibly housing provider) over the short term; and
 - (iii) the complexities of the requirement to move residents from a residential model to a supported living model and the need for integration during the transition.
4. In the circumstances and taking into account that there is a fairly limited market for providers for these kinds of services with most of the providers being not-for-profit charitable organisations, the County solicitor considers that the award of a one year contract (plus a one year extension) period is justifiable. Where possible the extension period should be reduced if the transition from residential to supported living can be achieved more quickly.

D. Recommendations

In light of the information in the exemption report prepared by the Director of S &CS, the County Solicitor recommends that the request for exemption is approved in the terms proposed, in these special circumstances.

Peter Clark
County Solicitor

22 October 2014