



Delegated Decisions by Cabinet Member for Adult Social Care

***Tuesday, 25 November 2014 at 9.00 am, Meeting Room 1
County Hall, New Road, Oxford***

Items for Decision

The items for decision under individual Cabinet Members' delegated powers are listed overleaf, with indicative timings, and the related reports are attached. Decisions taken will become effective at the end of the working day on Wednesday 3 December 2014 unless called in by that date for review by the appropriate Scrutiny Committee.

Copies of the reports are circulated (by e-mail) to all members of the County Council.

These proceedings are open to the public

Handwritten signature of Peter G. Clark in black ink, underlined.

Peter G. Clark
County Solicitor

November 2014

Contact Officer: **Julie Dean**
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Note: Date of next meeting: 16 December 2014

If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named on the front page, but please give as much notice as possible before the meeting.

Items for Decision

1. **Declarations of Interest**
2. **Question from County Councillors**

Any county councillor may, by giving notice to the Proper Officer by 9 am two working days before the meeting, ask a question on any matter in respect of the Cabinet Member's delegated powers.

The number of questions which may be asked by any councillor at any one meeting is limited to two (or one question with notice and a supplementary question at the meeting) and the time for questions will be limited to 30 minutes in total. As with questions at Council, any questions which remain unanswered at the end of this item will receive a written response.

Questions submitted prior to the agenda being despatched are shown below and will be the subject of a response from the appropriate Cabinet Member or such other councillor or officer as is determined by the Cabinet Member, and shall not be the subject of further debate at this meeting. Questions received after the despatch of the agenda, but before the deadline, will be shown on the Schedule of Addenda circulated at the meeting, together with any written response which is available at that time.

3. **Petitions and Public Address**
4. **Request for Exemption from Contract Procedure Rules for a Residential Care Service for People with a Learning Disability provided by The Camden Society** (Pages 1 - 8)

Forward Plan Ref: 2014/162

Contact: Samantha Broadbent, Commissioning & Contracts Officer Tel: 07917 534264

Report by Director for Adult Social Services (**CMDASC4**).

The Council originally tendered these residential care services under a 1 year contract, with a one year extension clause. This extension ends at the end of February 2015. The intention of this contract was to remodel the residential care services as supported living in accordance with the Council's strategic commissioning plan. Due to lack of engagement by the landlord (Housing Solutions Group) it has not been possible to carry out the remodelling exercise. The Camden Society has proposed an alternative approach which involves replacing the existing properties with mainstream housing acquired on the open market. The Camden Society is proposing to enter into a partnership with a specialist housing provider. The remodelling exercise will take up to two years. It is therefore considered that the most favourable option is to approve an exemption to the Council's Contract Procedure Rules to enable the Camden Society to remodel the residential care services as supported living for people with a learning disability. Once these schemes have been remodelled a mini-competition will be carried out using the Learning Disability Framework Agreement.

The Cabinet Member for Adult Social Care is RECOMMENDED to approve the exemption from the Council's Contract Procedure Rules in respect of a contract for Residential Care Services for People with a Learning Disability provided by the Camden Society.

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Division(s): N/A

DELEGATED DECISIONS BY CABINET MEMBER FOR ADULT SOCIAL CARE – 25 NOVEMBER 2014

Request for Exemption from Contract Procedure Rules for a Contract providing Residential Care Services for People with a Learning Disability provided by the Camden Society

Report by Director of Adult Social Services

1. Introduction

2. This request for exemption relates to a contract for the provision of three residential care services for fourteen people with a learning disability.
3. The Council originally tendered these services under a 1 year contract, with a one year extension clause. This extension ends at the end of February 2015. The value of the current contract to February 2015 is £1,638,337.96.
4. The decision to offer a 1+ 1 contract was made as the Council had hoped to de-register the services as residential care home during this period and then re-tender the services as supported living services under the Learning Disability Framework Agreement.
5. This work has been delayed due to the need to reassign leases from NHS Property services to the Council. This work has stalled because Housing Solutions Group (HSG) are simply not responding to any contacts. HSG receives guaranteed income from the leases - £45k each for Haven and Poplars, £28k approx. for Woodlands and it was envisaged that this revenue stream could be used to remodel the residential care home as the same amount would not be recoverable from housing benefit.
6. In light of the problems with HSG the Camden Society has now developed an alternative proposal that does not involve remodelling the existing properties and instead involves working in partnership with a specialist housing charity to identify alternative properties.
7. The contract with the Camden Society ends at the end of February 2015, so in order for this proposal to work the Council needs to seek an exemption from the contract procedure rules to enter into a contract for up to a two year period at which point the supported living services could be tendered under the Learning Disability Framework Agreement. The Council will still have the option of giving notice under the contract and retendering the service during this period.
8. The estimated value of a contract extension up until February 2017 is £1,598,337.96.

9. **Exempt Information**

10. Not applicable

11. **Reason for requesting exemption from Contract Procedure Rules**

12. There are four main reasons for seeking an exemption to the Council's Contract Procedure Rules which are set out below.

13. There have been unforeseen delays in developing the alternative supported living service as a result of the lack of engagement by a third party.

14. The proposals will ensure that an integrated approach will be developed as the Camden Society has secured the participation of a specialist housing provider.

15. The proposals will ensure that there is service continuity and provision for the 14 residents during the remodelling process. The Camden Society has developed a close working relationship with the service users and families and this trust will facilitate the remodelling process.

16. A tendering process at this stage will be disruptive to the service users and their families. The potential consequences of not requesting an exemption and re-tendering the services are detailed below, and are specific to this client group and the history around this service.

17. In addition there are a number of supplementary benefits to the extension. The Camden Society will provide charitable resources for the remodelling process. In addition the remodelling process itself will lead to a more efficient deployment of supported living staff, resulting in savings to the Council.

18. Due to the reasons described above, it is highly unlikely that any other provider would be willing and able to deliver the unique transitional service required.

19. **Potential Consequences of not requesting an exemption**

20. The potential consequences are outlined below:

21. If the contract is not extended, the residential care services will need to be re-tendered so that a new contract can be awarded to start from 1 March 2015. This will delay the work involved in remodelling the service.

22. There is a duty of care to the residents currently receiving this service and it is envisaged that this procurement process is likely to cause a great deal of anxiety for service users and family members, who have built a close working relationship with the Camden Society.

23. There is also some additional history relating to these services that is likely to add to the potential consequences described above. These services were initially provided by a failing Organisation. As a result of concerns relating to health and safety and safeguarding, the Camden Society took over these services in March 2012 as part of an emergency procurement. As this procurement was completed in an emergency situation, the services had to be re-procured again in 2012. This was done as a full procurement outside of the Learning Disability Framework. Family members and residents were fully involved in this process and unanimously decided to retain The Camden Society as their preferred provider. Because of their experiences with the failing provider, family members and residents were particularly anxious about any further changes.
24. As a result of this history, any procurement needs to be handled sensitively. Some of the residents have been living in the service since opening. The services have been relatively stable since The Camden Society became the preferred provider, and any potential changes are likely to increase anxiety, particularly if completed very quickly. Procurement at this stage will mean that the residents and their family members will have experienced uncertainty around their care provider four times during the period 2012-2015. This exemption will provide service continuity in the short-term, whilst giving residents and family members the opportunity to be involved and make decisions about their future service provider in the longer-term, when the service is tendered through the Learning Disability Framework Agreement following the remodelling process
25. **Financial and Staff Implications**
26. An exemption from Contract Procedure Rules is sought for up to two years, from 1 March 2015 to 29 February 2017 at the current contract value with the requirement to review the value as the service is being remodelled to identify any efficiency savings. The Council also reserves the right to tender the residential care service during the extension period in the event that the Camden Society is unable to deliver their proposals.
27. The exemption will allow the Council to align this contract with the Learning Disability Framework Agreement. This will reduce the costs of tendering as the supported living services can be called off from the Framework Agreement through a mini-competition rather than going out to a full tender.
28. **Legal Appraisal by County Solicitor**
29. The Legal Appraisal is attached at Annex 1.

30. **RECOMMENDATION**

31. **The Cabinet Member for Adult Social Care is RECOMMENDED to approve the exemption from the Council's Contract Procedure Rules in respect of a contract for Residential Care Services for People with a Learning Disability provided by the Camden Society.**

John Jackson
Director for Social & Community Services

Contact Officers:
Samantha Broadbent, Commissioning & Contracts Officer, Social & Community Services, Tel: 07917 534264
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November 2014

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

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