

Division(s):

CABINET MEMBER FOR ADULT SOCIAL CARE – 16 SEPTEMBER 2014

Request for Exemption from Contract Procedure Rules for a Contract providing Supported Living Services for People with a Learning Disability (108C) provided by Dimensions at Owens Way, Oxford - CPU376

Report by Director for Social & Community Services

Introduction

1. This request for exemption relates to a contract for the provision of Supported Living Services at Owens Way to five people with a learning disability and additional physical disabilities.
2. The contract commenced on 18th February 2008 for a period of five years (with an option to extend for two years in aggregate).
3. The contract is currently with a provider that specialises in providing disabled people with housing and support services tailored to their individual needs to enable them to live more independent lives. These services include the provision of affordable, high quality accommodation for rent and shared ownership, including supported housing, floating support services, accessible housing registers and adaptations services.
4. The contract ends on the 17 February 2015 and there are no further options to extend available. The contract could be re-tendered as an individual service on the existing Learning Disability Framework Agreement and completed as a Call-Off on Category 6. However, the number of providers is restricted by the current Framework Agreement whereas the new Framework being put in place for next April 2015 will have a wider scope for the provision of learning disabilities services with additional physical disability needs.
5. In addition, an exemption on the Owens Way contract and extension until the end of September 2015 will enable this service to be re-tendered with the Millers Yard, Marywood and Mencap Supported Living Services as lots on the new Learning Disability Framework, thereby potentially achieving greater efficiencies.

Reason for requesting exemption from Contract Procedure Rules

6. The prime reason for requesting an exemption to the Council's Contract Procedure Rules is to ensure that there is service continuity and provision for the 5 tenants involved, along with avoiding unnecessary anxiety to 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.

7. An exemption on the Owens Way service to allow an extension until the end of September 2015 will enable this contract to be re-tendered with the Millers Yard, Marywood and Mencap Supported Living Services as lots on the new Learning Disability Framework (commencing 1st April 2015), and re-procuring these services as 5 year (plus 2 year extension) contracts.

Potential Consequences of not requesting an exemption

8. The potential consequences are outlined below:
9. If the contract is not extended, the Owen's Way service will need to be re-tendered in the short-term (for 6 months) and then procured a second time to sustain the strategic objective of co-ordinating this service with the other related services.
10. There is a duty of care to the tenants currently receiving this service and it is envisaged that any procurement process (i.e. where this is carried out twice in the short space of a year) is likely to cause a great deal of anxiety for service users and family members, who will be involved in the procurement and decision making process. In order to ensure that a service provider is in place by February 2015, the procurement process will need to begin in September 2014. Once this new 6 month contract is awarded, the service will need to be re-tendered again to meet the strategic objectives outlined above. This second stage of the process will need to begin in April 2015 under the new Learning Disability & Physical Disability Framework. This is likely to cause anxiety and instability in service provision for the tenants and family members.
11. This approach also means that there is potential for there to be two changes of provider in less than a year. This will also result in anxiety for tenants and family members, and instability in service provision.
12. This exemption will provide service continuity in the short-term, whilst giving tenants and family members the opportunity to be involved and make decisions about their future service provider in the longer-term.
13. The cost of resources required to re-tender far outweighs the outcome *in the short term*. As stated above, the costs of conducting a mini-tender for a relatively low value short-term business opportunity would be disproportionate to the short-term outcome we are seeking.

Financial and Staff Implications

14. An exemption from Contract Procedure Rules for this contract for 6 months, from 1 April 2015 to 30 September 2015 at the current contract value *pro rata* has a total value of £151,843.

15. In addition, the exemption will allow a number of contracts to be tendered at the same time leading to greater efficiencies. This will help to secure the delivery of the budget savings for 2015/16 onwards.

Equalities Implications

16. These are explored in paragraphs 6 and 10 above.

Legal Appraisal by County Solicitor

Background

17. The Social and Community Services Directorate is seeking exemption under CPR 4 from the tendering requirements under CPRs 12-18 in relation to the extension of an existing contract dated [18th February 2008] between OCC and [Dimensions (NSO) Ltd] (the "Contract") from its expiry on 17th February 2015 until 30th September 2015. The contract extension has a value of £151,843. All existing contractual options to extend have been exhausted.

Grounds for Exemption

18. Special factors relevant to the extension of the existing Contract are cited by Social & Community Services as follows:

- Existing Framework Agreement inadequate
- New Framework Agreement not in place until expiry of the existing Contract
- Opportunity to synchronise the Contract with other similar contracts

Potentially disruptive effect on clients and political sensitivity of a short term contract award followed by a re-letting

Appraisal

19. In making its contract arrangements, the Council is required to demonstrate that it has acted in accordance with the European Union Treaty-based principles of fairness, transparency, non-discrimination and proportionality ("the European Union 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.
20. Both the Contract Procedure Rules and the Regulations are drafted with the European Union Principles in mind. The Regulations impose two levels of procedural requirement, depending on the nature of services being procured. The Contracts fall under the Part B regime imposed by the Regulations and are therefore subject to more limited procedural requirements.
21. Notwithstanding the limited procedural requirements, the County Solicitor is concerned to ensure that the contractual arrangements proposed by Social & Community Services demonstrate compliance with the European Union principles.

22. The County Solicitor accepts that this is an interim arrangement to allow new procurement arrangements to be made, to avoid unnecessary disruption to clients and to allow this procurement to be synchronised with others.

Recommendation of the County Solicitor

23. Subject to the conditions that no further exemption in respect of the Services will be issued, the County Solicitor considers therefore that the requested exemption is justified in these special circumstances and recommends that the request for exemption is approved.

Financial Appraisal by Finance Business Partner.

24. The exemption should be approved for the reasons set out in this report. In particular, the exemption will allow a number of contracts to be tendered at the same time leading to greater efficiencies. This will help to secure the delivery of the budget savings for 2015/16 onwards.

RECOMMENDATION

25. **The Cabinet Member – Adult Social Care is RECOMMENDED to approve the exemption from the Council’s Contract Procedure Rules in respect of a contract for Supported Living Services for People with a Learning Disability provided by [Dimensions (NSO) Ltd] at Owens Way, Oxford**

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September 2014