

CABINET

17 July 2018

Title: Waiver Request for the Provision of Temporary Accommodation for Families with No Recourse to Public Funds	
Report of the Cabinet Member for Social Care and Health Integration	
Open Report	For Decision
Wards Affected: None	Key Decision: No
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Accountable Director: Chris Bush; Commissioning Director for Children’s Care and Support	
Accountable Strategic Leadership Director: Elaine Allegretti; Director of People and Resilience	
Summary: This report seeks approval for a retrospective waiver for the provision of temporary accommodation for families with no recourse to public funds (NRPF). NRPF is a condition imposed by the UK Visas and Immigration service on a person who is subject to immigration control, giving them no entitlements to benefits or public housing.	
Recommendation(s) The Cabinet is recommended to: (i) Waive the requirements to advertise and tender for the provision of temporary accommodation for families with no recourse to public funds in accordance with the Council’s Contract Procurement Rules; (ii) Agree the retrospective award of three contracts to the Griha Group, FineFair and N.K.B and Associates (formerly known as Harrison Property Associates) for the period 1 November 2017 to 31 March 2019 in accordance with the strategy set out in the report; and (iii) Authorise the Director of People and Resilience, in consultation with the Cabinet Member for Social Care and Health Integration, the Chief Operating Officer and the Director of Law and Governance, to enter into the contracts with the three providers.	
Reason(s) <ul style="list-style-type: none">To enable the Council to fulfil its statutory duties as prescribed in accordance with the Council’s Contract Rules for ‘light touch regime’ contracts.	

- To enable the Council to fulfil its statutory duties as prescribed within Section 17 and Section 20 of the Children Act 1989 and leaving care provision of the Children's Act 1989.
- To provide a range of temporary accommodation for families with no recourse to public funds

1. Introduction and Background

1.1 Council's Statutory Duty

1.1.1 Families with children under 18 who have no legal rights to remain in the United Kingdom or limited rights to make claims on public funds may present to Children's Services in Local Authorities seeking assessments where they are destitute or have insufficient funds to meet their children's needs. The families may be asylum seekers, European Economic Area nationals (EEA) or visa over-stayers with No Recourse to Public Funds (NRPF) which is a condition imposed by the UK Visa and Immigration service on a person who is subject to immigration control, giving them no entitlements to benefits or public housing.

1.1.2 Financial support from their local authority is not deemed to be public funds as it is determined through a statutory assessment process that assesses the families level of need against a threshold for Children's Services assistance.

1.1.3 Where people are deemed to have NRPF under the Immigration and Asylum Act 1999 and find themselves destitute. Families can apply to their local authority for support and they may turn to the Children's Services under the following Acts:

- Section 17 of the Children Act 1989 which requires the local authority to identify and meet the needs of children in need in their local area. A destitute child will be in need and the local authority can be required to provide accommodation and subsistence to the child and their parents under this section.
- Under the leaving care provision of the Children's Act 1989.
- Under Section 20 of the Children's Act 1989 it is the local authority's duty to provide a child with somewhere to live because the child doesn't currently have a home, or a safe home:
 - there isn't anyone who has parental responsibility for him (for e.g. an asylum-seeking child who has come to the UK on his own);
 - the child has been lost or abandoned;
 - the person who has been caring for the child can't provide him with a suitable home, whatever the reason for this and regardless of whether this is a short-term or long-term problem.

1.1.4 Under Section 17 provision, there is a general duty on the local authority to assess and provide support to children within their area and with this to provide financial assistance. In establishing the position with regards to families requesting Section 17 support in NRPF cases, the Council must take the following steps:

- Establish that the applicant is resident in Barking and Dagenham
- Establish that the applicant is an adult with responsibility for children and therefore there is a duty to assess and support under the Children Act 1989
- Establish that the family is destitute

- Carry out an immigration check to establish eligibility under immigration legislation – i.e. there is an explicit expectation that in supporting families with NRPF the individual adult will have applied to the Home Office UK Visas and Immigration department for leave to remain in the country
- Check whether the local authority is excluded from supporting the person under s52 of the Nationality, Immigration Act 2002
- Where the applicant falls within one of the excluded groups, carry out a human rights assessment to establish whether there is an obligation on the authority to provide support to prevent a breach of a person’s human rights.

1.2. Current Context

- 1.2.1 The Council currently place families with NRPF with three providers: Griha Group, FineFair and N.K.B and Associates (formerly known as Harrison Property Associates). The accommodation can include short and long-term accommodation solutions for families who are homeless for a variety of reasons for example, undergoing a single assessment.
- 1.2.2 In 2017/18, 48 families were placed in short term accommodation. As of March 2018, 31 families were placed with the Griha Group, 10 with FineFair and 4 with N.K.B and Associates.
- 1.2.3 The shortest time a family has been in temporary accommodation is one year and the longest so far is five years.
- 1.2.4 The Council is struggling to find accommodation in the borough due to a housing shortage therefore families are located outside of the borough for example LB Waltham Forest, LB Newham, LB Redbridge, LB Havering, LB Haringey as well as Wolverhampton and Birmingham.
- 1.2.5 The responsibility for procuring accommodation for families with no recourse to public funds was handed over to the Brokerage and Transport Team in October 2018 and it transpired that historically there has never been a contract in place. Therefore, the reason for this retrospective waiver is ensure that there is a formal contract in place and compliance with the Council’s contract rules.
- 1.2.6 Children’s Care and Support commissioners have been liaising with commissioners in Community Solutions regarding a joint procurement strategy for securing temporary accommodation. A joint procurement should result in better outcomes for families with NRPF as well as attracting more bids at competitive prices. As such we will continue to work with Community Solutions and envisage undertaking a tender process from October 2018 to identify the best providers and this should enable the Council to reduce the cost of the current service going forward. The new contract will start on 1 April 2019.

Table 1: Procurement Timetable

Activity	Completion Date
Report considered at Pre-Procurement Board	3 April 2018
Report considered at Procurement Board	16 April 2018

Report considered at Cabinet	17 July 2018
Procurement/tender exercise	October 2018 – 31 January 2019
Alcatel (10-day standstill period)	1 February 2019 – 11 February 2019
Contract award	12 February 2019
Contract mobilisation (if required)	18 February – 31 March 2019
Contract start date	1 April 2019

2. Proposed Procurement Strategy

2.1 Outline specification of the works, goods or services being procured.

The interim contracts will allow the council to procure temporary accommodation for families with no recourse to public funds with several providers. The accommodation will include:

- Flats
- Studio flats
- Rooms in a shared house

The accommodation will be located all over the country including LB Waltham Forest, LB Newham, LB Redbridge, LB Havering, LB Haringey as well as Wolverhampton and Birmingham.

2.2 Estimated Contract Value, including the value of any uplift or extension period.

The cost of the service is estimated to be £895,204 between 1 November 2017 to 31 March 2019. This is based on 17/18 figures. However, this figure could be higher or lower based on the number of families presenting to the local authority.

2.3 Duration of the contract, including any options for extension.

The duration of the contracts will be 17 months, commencing in 1 November 2017 to 31 March 2019. This will give commissioners time to undertake a tendering process.

2.4 Is the contract subject to (a) the (EU) Public Contracts Regulations 2015 or (b) Concession Contracts Regulations 2016? If Yes to (a) and contract is for services, are the services for social, health, education or other services subject to the Light Touch Regime?

The contracts which each provider is considered a 'light touch regime contract' which fall below the LTR threshold.

2.5 Recommended procurement procedure and reasons for the recommendation.

At present temporary accommodation for families with NRPF is spot purchased and no pricing mechanism is in place. As such it is recommended that contracts should

be awarded to the Griha Group, FineFair and N.K.B and Associates for the following reasons:

- To secure prices for the interim
- To allow for the providers to be monitored effectively to ensure the quality of the service provided

2.6 The contract delivery methodology and documentation to be adopted.

To be delivered by several external providers. This will enable the council to have a range of different types of accommodation available to suit the varying needs of families with NRPF.

2.7 Outcomes, savings and efficiencies expected as a consequence of awarding the proposed contract.

Cost savings:

- At present there are no cost savings but there is a potential to make savings when the new contract starts next year.
- The Griha Group is the most cost-effective provider therefore they are used more frequently

Outcomes:

Having a formal contract in place will enable the council to ensure that the procurement processes is as follows:

- A contract will also enable the council to have more control over monitoring providers thus ensuring that there is a clear specification and key performance indicators in place and that providers are regularly monitored against and held accountable when necessary. This will ensure that the quality of the accommodation provided is fit for purpose and meets requirements such as health and safety and safeguarding.
- There is a possibility that savings and efficiencies could be made as commissioners will negotiate prices with the current providers prior to contracts being signed. Furthermore, there is no guarantee that all these providers will be used.
- A contract in place will also enable the council to meet its obligation under Section 17 and Section 20 of the Children's Act 1989.

2.8 How the procurement will address and implement the Council's Social Value policies.

Having a contract in place to procure temporary accommodation for families with NRPF will ensure that the contract promotes social values by protecting the most vulnerable and keeping children healthy and safe.

3. Options Appraisal

3.1 Option 1: Do nothing

The council may choose to 'do nothing' and continue with the 'as is' business process. This is not the recommended option because there are currently no temporary accommodation contracts in place for families with NRPF therefore this option would result in the council not having any formal contracts in place.

Furthermore, not having contracts in place impacts on the council's ability to effectively monitor the quality of accommodation, hold providers to account if it falls below a certain standard and monitor compliance with safeguarding and health and safety which could impact on the quality of service received by families.

3.2 Option 2: Join an existing Framework Agreement

Hackney Council and Islington Council currently have framework agreements for temporary accommodation. Therefore during the course of the waiver we will endeavour to identify whether or not LBBD can call-off these contracts.

3.3 Joint Tender with Community Solutions

Commissioners are looking into the possibility of undertaking a joint tender exercise with housing in the future as this should result in savings. Discussions have taken place with Community Solutions and we plan to undertake a joint procurement process to tender for temporary accommodation. Community Solutions contracts end in March 2019 therefore we have asked for this waiver to end on 31 March 2019 to bring our contract end date in line with Community Solutions contracts end date.

3.4 Option 4: Cease to provide accommodation

This is not a viable option as the Children's Act 1989 stipulates that the local authority must provide temporary accommodation for families with no recourse to public funds.

4. Waiver

4.1 Request a retrospective waiver of the Council's Contract Rules to commission Griha Group, FineFair and N.K.B and Associates (formerly known as Harrison Property Associates) to provide temporary accommodation to families with NRPF within the LBBD on the grounds that an emergency situation exists as stated in 6.6 (a) of the Council's Contract Rules.

4.2 It is an emergency because under the Children's Act 1989 the council has a duty to provide accommodation if the child is destitute or their home is unsafe. However, at present families are being placed in accommodation and we do not have contracts with the providers. Therefore, having a formal contract in place as a matter of urgency will enable us to adequately monitor providers performance for example, health and safety and hold them to account if necessary to ensure families safety.

5 Equalities and other Customer Impact

5.1 This service will be offered to all families with NRPF that are seeking support from the local authority and that reside within the borough.

5.2 An Equality Impact Assessment will be carried out over the next few months and will inform the commissioning process going forward.

6. Other Considerations and Implications

6.1 **Risk and Risk Management** - There is a small risk of challenge from other providers and a tender exercise will commence this year to mitigate this risk.

6.2 **Safeguarding Children** - Providing a home for families with NRPF will help prevent impairment of children's health and development. Furthermore, it will enable the council to ensure that all children have the best outcomes.

6.3 **Health Issues** - The wellbeing of children in the borough and ensuring that potentially vulnerable children and young people have a roof over their head and live in suitable accommodation is a fundamental responsibility of the council which will result in positive health outcomes for the children and young people.

6.4 **Property / Asset Issues** - Commissioners will be working with property and Community Solutions over the coming months to identify if they have any suitable council accommodation that families with NRPF could be housed in.

7. Consultation

7.1 A consultation with stakeholders will be carried out over the next few months and will form part of the commissioning process for the new tender.

8. Corporate Procurement

Implications completed by: Francis Parker - Senior Procurement Manager

8.1 Corporate procurement does support this waiver. The justifications given make sense from an operational point of view as the Council works to get a formalised contract in place for these services.

8.2 The value of the contract exceeds the OJEU threshold for light touch regime tenders, so a waiver carries risk. The requirement should be advertised as per the EU regulations and PCR2015.

9. Financial Implications

Implications completed by: Katherine Heffernan, Group Manager Finance

9.1 There is currently no contract in place to manage temporary accommodation for families with No recourse to public funds (NRPF) and this has been managed on a spot purchase basis with some organisations which can have its own risks attached as in the current arrangement, where no contract is in place, the service providers are not held accountable.

9.2 The waiver seeks to award a contract to Griha Group, FineFair, N.K.B and Associates (formerly known as Harrison Property Associates) ensuring they are held accountable for the period 1st November to 31st March 2019 while commissioners prepare the formal tender process.

- 9.3 The estimated contract value of the service is £0.895m for eighteen months which is equivalent to £0.596m a year. However, this is a variable contract and the value could increase or decrease depending on the number of families the Local Authority would need to support in each financial year. At the lower end of the price range quoted in paragraph 2.2 (£27 per night) this would cover around 50 to 60 families but only 15 to 20 families at the higher end (£90 per night.) This means that the cost of the contract could vary significantly depending on the number of families and the accommodation that can be obtained.
- 9.4 There is currently sufficient budget provision available to fund this contract, but this would need to be reviewed on an annual basis to ensure that costs are managed by the service within existing funds. Because of their NRPF status we are unable to recover any costs through Housing benefit or Universal Credit and so the whole cost must be carried by the Council.

10. Legal Implications

Implications completed by: Kayleigh Eaton, Contracts and Procurement Solicitor, Law and Governance

- 10.1 This report is seeking Cabinet's retrospective approval to waive the requirement to tender and enter into agreements for 17 months with the 3 contractors set out in this report from 1st November 2017 until the 31st March 2019.
- 10.2 The services referred to fall within the Light Touch Regime (LTR) of the Public Contract Regulations 2015 (the 'Regulations'). This means that a higher threshold, set at approximately £589,148 in November 2017, applies before a contract needs to be advertised in the Official Journal of the European Union. It is noted that one of the contracts alone has a value of £649,114 and the collective value of the contracts is £895,204, both of which are in excess of the threshold and will therefore require to be advertised and opened up to competition in accordance with the Light Touch Regime. Care must be taken to not intentionally subdivide contracts with the effect of preventing them from falling within the scope of the Regulations unless justified by objective reasons.
- 10.3 As this contract is subject to the EU procurement rules it should be noted that continuing with the direct award carries a risk of challenge to the Council. The Council should therefore consider steps to mitigate such risk in this regard. It is noted that the client department is currently investigating possible frameworks which could be used by the Council however no definite answer has been given as to whether this is a possible option to date. The client department is urged to exhaust all possible options as using a compliant framework would reduce the risks for the Council.
- 10.4 Consideration could also be given to reducing the contract period for the waiver or to publishing a Voluntary Ex Ante Transparency Notices (VEAT). However, it should be noted that simply publishing a VEAT notice will not completely remove the possibility of an ineffectiveness claim as the justification for the direct award must in itself be sound and capable of standing up to scrutiny.

- 10.5 While Contract Rule 6.3 provides for the Cabinet to waive the requirement to tender on any one of the several grounds set out in Contract Rule 6.6.8, it should be noted that the power is to waive the Council's Contract Rules only, and there will still be the requirement to comply with Public Contracts Regulations 2015.
- 10.6 The Responsible Directorate and report author are requested to keep the Law and Governance Team fully advised on the progress of this matter and will be on hand to assist and answer any queries that may arise.

Public Background Papers Used in the Preparation of the Report: None

List of appendices: None