

## CABINET

16 October 2018

<b>Title:</b> Contract for the Provision of Accommodation for Homeless Families	
<b>Report of the Cabinet Member for Regeneration and Social Housing</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> All Wards	<b>Key Decision:</b> Yes
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<b>Accountable Director:</b> Mark Fowler, Community Solutions	
<b>Accountable Strategic Leadership Director:</b> Claire Symonds, Chief Operating Officer	
<b>Summary:</b> <p>At present the Council utilises the provision of temporary accommodation in meeting its statutory duty to house customers legally defined as homeless under part VII of the Homelessness Act 1996 (as amended). To date, the Council's portfolio of temporary accommodation consists of 1,882 units of accommodation of which Private Sector Licensed (PSL) provides approximately 1,403 units. The gross annual value of the portfolio is circa £20m.</p> <p>The Council aims to reduce the total number of homeless households in temporary accommodation to 1,750 within the financial year 2018-2019. In achievement of this ambition, the Council has developed a wider strategy to tackle the prevention of homelessness which includes the utilisation of private sector rent deposit as a means of assisting applicants to whom the local authority may owe a homelessness duty. Whilst ambitious in the motivation to reduce the number of households within temporary accommodation, it is acknowledged that wider socio-economic factors including ongoing welfare reforms and the introduction of the Homelessness Reduction Act are anticipated to result in unprecedented demand for assistance with re-housing as a consequence of homelessness.</p> <p>This report sets out a request to implement a framework under which the provision of temporary accommodation and private sector accommodation can be procured to address both existing and future demand.</p>	
<b>Recommendation(s)</b> <p>The Cabinet is recommended to:</p> <ul style="list-style-type: none"><li>(i) Approve the proposals to procure a new contract for the provision of private sector properties for use as either temporary accommodation (Private Sector licensed PSL) or Assured Shorthold Tenancy (AST) for homeless households or those</li></ul>	

imminently threatened with homelessness, in accordance with the strategy set out in the report;

- (ii) Waive the necessary requirements, in accordance with the Council's Contract Procurement Rules, in order to extend the current contracts for the provision of Private Sector Licensed properties with the 19 contractors up to a maximum of five months or the commencement of a new contract, whichever is the sooner; and
- (iii) Delegate authority to the Director of Community Solutions, in consultation with the Cabinet Member for Regeneration and Social Housing, the Chief Operating Officer and the Director of Law and Governance, to conduct the procurement and enter into the contract and all other necessary or ancillary agreements with the successful bidder(s) in accordance with the strategy set out in the report.

#### **Reason(s)**

To assist the Council to achieve its priority to 'redesign services in order to better meet the needs and aspirations of the community. To comply and fulfil the Council's statutory obligation to provide temporary accommodation to residents of the borough accepted as homeless under Part VII of the Housing act 1996 (as amended).

## **1. Introduction and Background**

- 1.1 The Local authority has a statutory duty to provide temporary accommodation for households to whom a duty has been established under Part VII (homeless duties) of the Housing Act 1996 (as amended). In order to fulfil this function, the Council is required to source a variety of accommodation to ensure a sufficient supply to meet the needs of homeless households. This includes use of existing Council stock that has been decanted as part of the Estate Renewal Program, other flatted general needs stock, Council-owned hostels, privately-owned bed and breakfast accommodation, private rented accommodation sourced for use under the Rent Deposit Scheme and private sector rented property let on license, referred to as PSL.
- 1.2 The current temporary accommodation portfolio consists of 1,882 units of accommodation as described above of which PSL provides approximately 1,403 units, supplied by 18 providers. The gross annual value of the portfolio is £20m.
- 1.3 PSL suppliers provide both property and management related functions to the local authority under the terms of a contract entitled 'contract for the provision of Private Sector Licensing'. The existing contract defines and specifies key operational metrics such as minimum property standards, performance monitoring, repairs timescales and handback procedures.
- 1.4 A decision to procure a new contract for the provision of Private Sector Licensed Properties for use as temporary accommodation for homeless households and to extend the current contract until the commencement of a new contract was approved by Cabinet in April 2014. The current contract expires on 31 October 2018.

- 1.5 Private Sector Rent Deposit suppliers also provide property and management related functions however the provision of service is administered under an Assured Shorthold Tenancy (AST) which is a legal document between the homeless applicant (Tenant) and the Agent (Landlord). Eligible applicants are provided with offers of properties procured via Private Sector Rent Deposit both as a means of homelessness prevention and in discharge of the local authority's homelessness duty under the homelessness act 1996 (as amended).
- 1.6 The Council works with a network of managing agents to procure suitable properties for use as temporary accommodation and private sector rent deposit. In order to ensure a property meets the needs of an applicant the Council review the following key suitability factors:
1. **Rent charge.** The local authority ensure rent charges for Private Sector Rent Deposit properties are as close to Local Housing Allowance rates as possible. This ensures compliance with affordability standards and assists applicants on low incomes who may otherwise be adversely impacted by ongoing inflation in the private rented market.
  2. **Tenancy duration.** The Council aim to secure initial tenancy periods of at least 2 years for properties procured via the Private Sector Rented Deposit Scheme. This encourages a level of consistency and sustainability for both residents and landlords.
  3. **Health and Safety compliance-** Agents are required to provide Gas safety certificates, Electrical safety certificates (where applicable) Energy Performance Certificate, PAT testing certification for any electrical items provided, proof of fire resistance for any furniture provided, proof of ownership and liability insurance. Demand for emergency interim accommodation (temporary accommodation) is forecast to increase. Socioeconomic factors including significant inflation within the private rented sector, a reduction in the total volume of available Council homes, ongoing welfare reforms and the introduction of the Homelessness Reduction Act (HRA) which became an Act of Parliament on 27 April 2017 have resulted in unprecedented demand for assistance with re-housing as a result of homelessness. The Homelessness Reduction Act extends and outlines several new responsibilities for local authorities in consideration of aiding applicants threatened with homelessness.
- 1.7 In order for the Council to continue to fulfil its statutory duties and meet strategic ambitions of reducing the number of homeless households in temporary accommodation the award of a revised tender contract is necessary.
- 1.8 The tender contract should seek to be robust as far as it provides clear, reasonable, and enforceable terms and conditions in key areas such as price and payment, costs and expenses, performance, repairs and maintenance, insurance, indemnity and liability, handback and termination, health and safety and statutory obligations.
- 1.9 The contract must also seek to provide sufficient flexibility to allow the Council to meet dual targets of reducing the number of homeless households in temporary accommodation, responding to projected increases in demand and where possible providing a net saving to services where existing property procurement arrangements are resulting in considerable expense to the local authority.

Examples of flexibility which meets the above-mentioned targets may include- the ability to convert suitable Private Sector Licensed (PSL) agreements to Assured Shorthold Tenancies in discharge of the Councils' homelessness duty and a framework under which property suppliers have the ability to apply and contract as providers of PSL accommodation or private rented Rent Deposit accommodation or both.

## **2. Proposed Procurement Strategy**

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

2.1.1 The proposed tender process will enable the Council to put a Framework Agreement in place under which accommodation providers can apply to provide Rooms, flats and houses of varying bedroom sizes to assist eligible homeless applicants including families with No Recourse to Public Funds.

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

2.2.1 Upon commencement of the new contract the estimated value is circa £83m over the contract period. The estimated value of the extension period commencing from expiry of the existing contract (1 November 2018) for a maximum five-month period until commencement of the new contract (1 April 2019) is approximately £1.6m per month or £8m.

### **2.3 Duration of the contract, including any options for extension**

2.3.1 For a term of three years from November 2018 with an option to extend for a further period of [up to] one year. The maximum duration of the contract is therefore four years

### **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**

2.4.1 This is a service contract which is not subject to the light touch regime.

### **2.5 Recommended procurement procedure and reasons for the recommendation**

2.5.1 The tender process will be conducted in compliance with the Council's Contract Rules. The tendering of this service will be advertised on the Council's e-tendering website.

2.5.2 Providers expressing an interest in the tender will be issued with a tender pack which will give clear details on the quality criteria and weightings. This will be a single stage tender using the Open Process in accordance with the Public Contracts Regulations 2015 which will offer the opportunity and support to less experienced providers to submit a tender for this framework contract.

The proposed weighting will be 100% quality. This weighting is based on previous experience which highlighted a large proportion of poor quality accommodation within the private sector market. To ensure the provision of good quality accommodation the Council aims to confirm a supplier's ability to demonstrate a track record of effective property management within this niche sector. Consideration was given to also utilising cost as a weighting metric however as part of the contract specification terms, successful providers will be expected to provide accommodation in line with the following:

**Temporary accommodation**-Pan London Broad Market Rental Agreement rate, (these are agreed rates set by each local authority for the provision of temporary accommodation within the specific borough).

**Private rent deposit**- Local Housing Allowance or up to a maximum 80% of market rate in line with the London affordable rent definition,

- 2.5.3 Tenders will be assessed on the weighting as outlined above. We propose this as the optimum balance of whole-life costs and benefits that meet the customer's requirements. The Council will request written statements to detail how they will meet the evaluation criteria.
- 2.5.4 Providers will be ranked on the framework according to the percentage of the quality score from their tender submission.
- 2.5.5 A service specification will set out the Council's expectations of the service provider.
- 2.5.6 Successful providers will be appointed to the Councils OJEU compliant framework of suppliers.
- 2.5.7 **Procurement Timetable**

Activity	Completion Date
Report considered at Procurement Board Sub Group	Monday 6 August 2018
Report considered at Procurement Board	Monday 20 August 2018
Report considered at Cabinet	Tuesday 16 October 2018
Advertise tender opportunity	Monday 5 November 2018
Closing date for receipt of completed tenders	Monday 31 December 2018 (8 weeks)
Tender evaluations	Monday 14 January 2019
Contract award sign-off	Monday 21 January 2019
Alcatel (10-day standstill period)	Wednesday 30 January 2019
Contract award	w/c Monday 4 February 2019
Contract mobilisation (if required)	w/c Monday 18 February 2019
Contract start date	w/c Monday 4 March 2019

## **2.6 The contract delivery methodology and documentation to be adopted**

2.6.1 The Framework agreement and contract delivery method will be:

- 2 lots consisting of 1. Private Sector Leasing (temporary accommodation) providers and 2. Private Sector Rent Deposit providers
- Services to be delivered by a number of specialist housing providers
- The Council will procure services from this framework of suppliers via a 'call off' arrangement under which each supplier will be contacted as needs arise to establish what properties they may have meeting the specifications outlined within the contract. Each property meeting the specifications will be procured in line with prevailing demand for housing. This aim is enable the Council to have a range of different types of accommodation suitable for the needs of customers.

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

2.7.1 The anticipated outcome of the contract is to have a wider supply of accommodation available which is also flexible enough to meet the anticipated demands, while having the ability to retain the existing supply of accommodation. A new contract with improved terms will put the Council in a stronger position in terms of guaranteeing a supply of accommodation to meet statutory obligations. Savings on the procurement of accommodation are not expected, due to changes in Government subsidy grants, however, securing self-contained accommodation, negates the need to procure expensive and less suitable bed and breakfast accommodation.

## **2.8 Criteria against which the tenderers are to be selected and contract is to be awarded**

2.8.1 As outlined above the criteria ratio upon which contracts will be awarded will be 100% quality. Providers will be ranked based on the quality of their tender submission.

2.8.2 Providers submitting applications as part of the tender will be assessed on quality via 4 method statement questions. These questions will be scored 0-5 depending on the quality of the answer. Providers submitting responses to any of the questions which are deemed to be below a satisfactory standard will be disqualified. Providers who have submitted satisfactory responses meeting the above-mentioned criteria will be awarded a contract to provide either Private Sector Licensed or Private Sector Rent Deposit services.

## **2.9 How the procurement will address and implement the Council's Social Value policies.**

2.9.1 The service is likely to benefit service users because they will have a wider range of available housing options. Landlords within local communities will also benefit as they will be receiving reasonable levels of rent payments for their properties.

### **3. Options Appraisal**

- 3.1 **Option 1: Do nothing** - The existing agreement to procure Private Sector Leasing property expires 1<sup>st</sup> November 2018. Should a revised framework agreement fail to be implemented the Council will be unable to continue procure accommodation within a legally compliant environment. Indeed, the Council could spot purchase accommodation however the financial impact would be both significant and adverse.
- 3.2 **Option 2: Join an existing Framework Agreement** - The Council have considered alternative procurement options such as regional consortiums however this has been ruled out as it does not represent long term value for money.
- 3.3 **Option 3: undertake a tender exercise to setup a framework agreement** - This is the recommended option as it will allow the Council to:
- Formalise and amalgamate the procurement of private rent deposit accommodation alongside the provision of PSL accommodation
  - Negate the uncertainty and exorbitant expense of spot purchasing.

### **4. Waiver**

- 4.1 Waive the requirements to advertise and tender in order to extend the contracts for the provision of Private Sector Licensed temporary accommodation properties with the 19 existing contractors for a maximum of up to five months or the commencement of a new contract, whichever is the sooner 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 homelessness act 1996 (as amended) the Council has a legal duty to provide interim emergency accommodation if a person(s) meet the requisite thresholds outlined under the legislation. This situation is made all the more acute following implementation of the Homeless Reduction Act 2018 which places additional duties on local authorities in providing assistance to relieve homelessness. Should the Local authority fail to meet its statutory homelessness duty the social, legal and reputational effects are likely to be significant.

### **5. Consultation**

- 5.1 The proposals in this report were considered and endorsed by the Procurement Board at its meeting on 20 August 2018.

### **6. Corporate Procurement**

Implications completed by: Francis Parker – Senior Procurement Manager

- 6.1 In terms of the new contract, the procurement approach highlighted in this report for is suitable for a contract of this scale and scope.
- 6.2 This procurement will be in full compliance with EU procurement regulations. Due to the nature of this contract, this procurement does not seek to reduce costs. The aim

is to ensure contractual compliance, with strong contractual terms and an increased supply of accommodation to the Council (which will reduce reliance on costly B&B provision).

- 6.3 Corporate procurement does not support the waiver for this service. Lack of action has put the Council in a non-compliant position and the justification for the waiver is not valid. The amounts requested to waive exceed the limits allowed by the PCR2015 and EU procurement directives which carries risk. However, we cannot stop provision of the PSL service and must continue to pay our suppliers.

## **7. Financial Implications**

Implications completed by: Katherine Heffernan, Group Manager – Service Finance

- 7.1 This report is seeking Cabinet approval to waive the requirement to tender and to extend the existing contracts for the provision of private sector leasing with the existing contractors for a period of up to six months. It also seeks approval of the procurement strategy for the procurement of the new framework.
- 7.2 The cost of private sector temporary accommodation varies according to the size and location of the accommodation. The Council pays the cost of leasing accommodation from the landlord (including management charges) and in turn charges the household rent to cover these costs. The rent that can be recovered by tenants is effectively constrained by affordability and in particular the rates set by the DWP for Housing Benefit.
- 7.3 Over recent years, the cost of accommodation has increased above the levels generally recovered from tenants requiring the Council to provide additional budget funding to cover these costs. It is therefore important that the procurement of accommodation is effective in keeping the cost as close to LHA rates as possible.
- 7.4 The actual cost of accommodation will vary according to the number and size of households accommodated – however it has been in the region of £20m per year (or c£1.67m a month.) This cost can be funded from reasonably collectable rents and the net budget allocation. However, it is essential that this is closely monitored.

## **8. Legal Implications**

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

- 8.1 This report is seeking Cabinet's approval to firstly, waive the requirement to tender and extend the existing contracts for the provision of private sector leasing with the existing 19 contractors for a period of up to 5 months from 1st November 2018 until the 31<sup>st</sup> March 2019 and secondly, to proceed with the procurement of new framework for the provision of private sector accommodation.
- 8.2 It is noted that all extension options within the contract have been used so the requested extension is sought to allow sufficient time for officers to procure the new framework and facilitate continuation of the service in order for the Council to satisfy its statutory obligation to provide interim emergency accommodation where a person meets the requisite thresholds outlined under the relevant legislation.



- 8.3 The client department is advised to work in collaboration with procurement in order to expediently procure the new arrangement so that the Council can start to procure accommodation under the new complaint framework. The Public Contracts Regulations 2015 permit contracts to be modified without a new procurement where the modification, irrespective of value, is not considered to be substantial. The regulations set out what is considered to be substantial and the Council should be mindful that where a substantial variation is made to a contract during its term, it can be considered to be a new contract which should be subject to a fresh procurement and therefore contrary to the EU procurement regulations. It is for this reason that the procurement process should commence without undue delay so that the extension is not at risk of being considered substantial.
- 8.4 The proposed new procurement being considered is estimated to cost the Council approximately £80 million over the lifetime of the framework and therefore is above the EU threshold for service contracts (currently set at approximately £181,302). This means that there is a legal requirement to competitively tender the framework via the Official Journal of the European Union (OJEU).
- 8.5 It is noted that the intention is to tender this framework in accordance with the Public Contracts Regulations 2015 (the 'Regulations') using the Open procedure. The requirements for competitive tendering, as contained in the Regulations and rule 28.5 of the Council's Contract Rules, should therefore be met, provided that the procedure is conducted in accordance with the Regulations.
- 8.6 Contract Rule 28.8 of the Council's Contract Rules requires that all procurements of contracts above £500,000 in value must be submitted to Cabinet for approval. In line with Contract Rule 50.15, Cabinet can indicate whether it is content for the Chief Officer to award the contracts following the procurement process with the approval of Corporate Finance.
- 8.7 The Responsible Directorate and report author are requested to keep the Law and Governance Team fully advised on the progress of this procurement who will be available to assist and advise throughout the process.

## 9. Other Implications

### 9.1 Risk and Risk Management

<b>Risk</b>	<b>Impact</b>	<b>Possible Mitigation</b>
Failure to attract bidder/s	<ul style="list-style-type: none"> <li>Limited choice of providers</li> </ul>	<ul style="list-style-type: none"> <li>Identify possible providers</li> <li>Hold market engagement event</li> </ul>
Delays to the start of the contract	<ul style="list-style-type: none"> <li>Cannot award contract within timescales</li> </ul>	<ul style="list-style-type: none"> <li>Extend contract with incumbent providers</li> </ul>
Providers submit non-compliant bids	<ul style="list-style-type: none"> <li>Cannot award the contract</li> </ul>	<ul style="list-style-type: none"> <li>Clear instructions and guidance on how to complete the tender given to providers to ensure better quality bids</li> </ul>

9.2 **Corporate Policy and Equality Impact** - The contract shall replace the current arrangement and shall therefore have no adverse impact on customers. Constituents currently residing in temporary accommodation will continue to do so. Official offers of Assured Shorthold Tenancies to eligible applicants will only be made where the Council confirm the property is reasonably suitable for a customer to occupy.

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

**List of appendices:** None